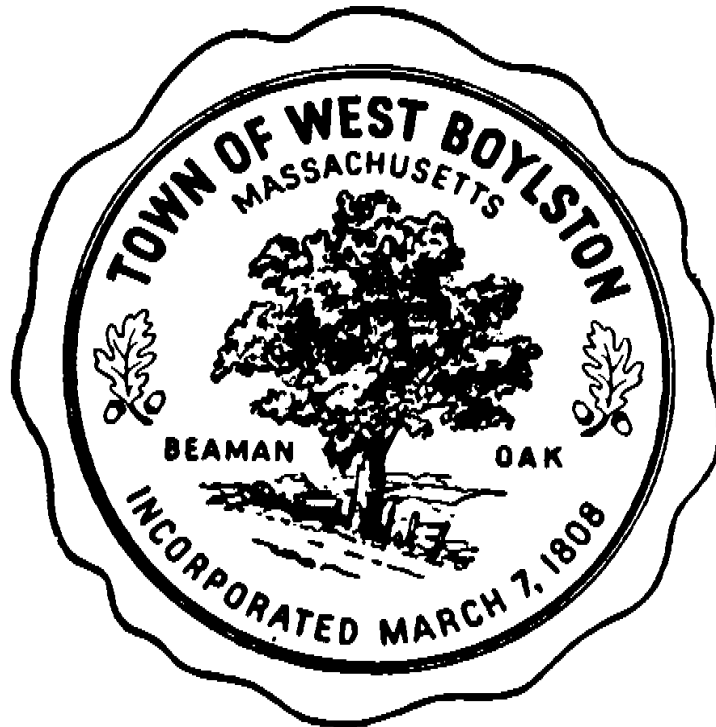


# *Town of West Boylston*

## *Zoning Bylaws*

# 2011



Kim D. Hopewell  
Town Clerk

*Town of West Boylston*  
*Zoning Bylaws 2011*

*As amended by the*  
*May 16, 2011*  
*Semi-Annual Town Meeting*



# *Section 1-* *General*

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**1.1****Authority**

This zoning by-law is adopted in accordance with the provisions of the General Laws, Chapter 40A.

**1.2****Purpose \*1**

The purpose of this by-law is to promote the health, safety, convenience and welfare of the inhabitants of West Boylston by dividing the town into zones or districts and regulates the use and construction of buildings and premises therein and such other objectives as set forth in Section 2A of Chapter 808 of the Massachusetts Acts of 1975.

*\*1- Amended April 4, 1977 – Article 23*

**1.3****Basic Requirements**

Except as hereinafter provided, no building, structure or premises shall be erected, altered or used for any purpose, except in conformity with the regulations herein specified for the district in which it is located, except that nothing in this by-law shall effect the existing use of any building or lot.

**1.4****Non-Conformity****A. Continuation of Non-Conforming Uses**

Any lawful building or use of a building or premises or part thereof at the time of this by-law or any amendment thereto is adopted may be continued, although such building or use does not conform to the provisions thereof, provided such use has not been discontinued for a period of one year.

**B. Change of Non-Conforming Uses \*28, \*76**

The Board of Appeals shall hear and decided upon application for special permits for extension, change, or alteration of non-conforming structures or uses as provided under Section 6, Chapter 40A of the Massachusetts General Laws. Special permits granted thereunder may be granted only in those cases where a finding is made that such a change, extension, or alteration shall not be substantially more detriment to the neighborhood than the existing use.

Non-conforming structures shall include structures which are otherwise conforming but are located on non-conforming lots. Reconstruction, extension, alteration or structural change to a single- or two-family residential, non-conforming structure may be permitted by the Building Inspector pursuant to Section 1.4.D.

*\*28 Amended May 21, 1990 – Article 11, and  
\*76-May 19, 2003 – Article 29*

**C. Temporary Use**

The Inspector of Buildings may permit a non-conforming temporary building or use incidental to the development of a neighborhood; such permit to be issued for an initial period of not more than one year, and for renewal periods of not more than one year. *\*95 May 16, 2011 Article 36*

- D. \* 77** Reconstruction, extension, alteration or structural change to a single- or two-family residential, non-conforming structure shall be allowed, and shall not require a special permit or variance from the Board of Appeals under Section 1.4B, provided that such reconstruction, extension, alteration or structural change does not increase the non-conforming nature of said structure.

The Inspector of Buildings may determine that reconstruction, extension, alteration or structural change to a single- or two-family residential, non-conforming structure does not increase the non-conforming nature of said structure when:

- a.) such change does not intensify the structure's existing nonconformities or result in additional ones, or
- b.) It retains the existing footprint and does not increase the envelope of that structure. The "envelope" of a structure shall be the existing outer surfaces of the structure.

*\*77- Amended May 19, 2003 – Article 29*

**1.5**

**Definitions**

Public Utility Facilities: Fixed equipment or installations for electricity, gas, water, or communications services for the public, privately or publicly owned.

A “Wireless Communications Tower” means a structure (with antennas, if any) designed to facilitate the following types of services; cellular telephone service, personal communications service and enhanced specialized mobile radio service.

# *Section 2-*

## *Establishment of Classes*

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**2.1****Classes of Districts**

The Town of West Boylston is hereby divided into zones or districts as follows:

- 1 Single Residence Districts
- 2 General Residence Districts
- 3 Business Districts
- 4 Industrial Districts
- 5 Conservation Districts
- 6 Commercial/Limited Industrial Districts \*85

*\*85- Amended Oct 15, 2007 – Article 13*

**2.2****Incorporation of Zoning Map \*75, \*80, \*89**

The boundaries of these zones or districts are hereby established as shown on the Zoning Map drafted in June 1974 by Joseph F. Murr and approved by the Town on June 9, 1975, at the adjourned session of the June 2, 1975 Special Town Meeting. This zoning map has been approved by the Office of the Attorney General on Jan. 10, 2008 and is hereby declared a part of this by-law.

*\*75- Amended May 20, 2002 – Article 29;*

*\*80- Oct 17, 2005 – Article 16, and*

*\*89- Oct. 15, 2007 – Articles 14 & 15*

**2.3****District Boundaries**

The district boundaries shall be determined by concrete bounds separating the districts as shown on the zoning map prepared by the Central Massachusetts Regional Planning Commission, drafted in June of 1974 by Joseph F. Murr. Figures in all cases serve as a guide, and the scale of the map may also be used. In cases of uncertainty, the boundary lines shall be determined by the Board of Selectmen.

**2.4****Lots in Two Districts**

Where a district boundary line divided a lot in a single or joint ownership at the time such line is adopted, the regulations for the less restricted portion of such lot shall extend not more than thirty feet into the more restricted portion, provided the lot has a frontage on a street in the less restricted district.

**2.5****Flood Plain Overlay Districts \*6****A. Statement of Purpose**

The purposes of the Floodplain District are to:

- 1 Ensure public safety through reducing the threats to life and personal injury;

- 2 Eliminate new hazards to emergency response officials;
- 3 Prevent the occurrence of public emergencies resulting from water quality, contamination, and pollution due to flooding;
- 4 Avoid the loss of utility services which if damaged by flooding would disrupt or shut down the utility network and impact regions of the community beyond the site of flooding;
- 5 Eliminate costs associated with the response and cleanup of flooding conditions;
- 6 Reduce damage to public and private property resulting from flooding waters.

## **B. Floodplain District Boundaries and Base Flood Elevation and Floodway Data**

### **1 Floodplain district boundaries and base flood elevation data**

The Floodplain District is herein established as an overlay district. The District includes all special flood hazard areas within West Boylston designated as Zone A, AE, AH, and AO on the Worcester County Flood Insurance Rate Map (FIRM) issued by the Federal Emergency management Agency (FEMA) for the administration of the national Flood Insurance Program. The map panels of the Worcester County FIRM that are wholly or partially within West Boylston are panel numbers 0439E, 0443E, 0444E, 0463E, 0606E, 0607E, 0610E and 0620E dated July 4, 2011. The exact boundaries of the District may be defined by the 100-year base flood elevations shown on the FIRM and further defined by the Worcester County Flood Insurance Study (FIS) report dated July 4, 2011. The FIRM and FIS report are incorporated herein by reference and are on file with the Town Clerk, Planning Board, Building Inspector and Conservation Commission.

#### **a Base Flood Elevation and Floodway Data**

- 1 Floodway Data.** In Zones A and AE, along watercourses that have not had a regulatory floodway designated, the best available Federal, State, local or other floodway data shall be used to prohibit encroachments in floodways which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- 2 Base Flood Elevation Data.** Base flood elevation data is required for subdivision proposals or other developments greater than 50 lots or 5 acres, whichever is the lesser, within unnumbered A zones.

### **2 Notification of Watercourse Alteration**

In a riverine situation, the Building Inspector shall notify the following of any alteration or relocation of a watercourse:

- Adjacent Communities
- NFIP State Coordinator  
Massachusetts Department of Conservation and Recreation



251 Causeway Street, Suite 600-7700

Boston, MA 02114-2104

- NFIP Program Specialist

Federal Emergency Management Agency, Region I

99 High Street, 6<sup>th</sup> Floor

Boston, MA 02110

## **C Use Regulations**

### **1 Reference to Existing Regulations**

The Floodplain District is established as an overlay district to all other districts. All Development in the district, including structural and non-structural activities, whether permitted by right or by special permit must be in compliance with Chapter 131, Section 40 of the Massachusetts General Laws and with the following:

- Section of the Massachusetts State Building Code which addresses floodplain and coastal high hazard areas;
- Wetland Protection Regulations, Department of Environmental Protection (DEP) (currently 310 CMR 10.00);
- Inland Wetland Restriction, DEP (currently 310 CMR 13.00);
- Minimum Requirement for the Subsurface Disposal of Sanitary Sewage, DEP (currently 310 CMR 15, Title 5);

Any variances from the provisions and requirements of the above referenced state regulations may only be granted in accordance with the required variance procedures of these state regulations.

### **2 Other Use Regulations**

- a In Zone AE, along watercourses that have a regulatory floodway designated within the Town of West Boylston on the Worcester County FIRM encroachments are prohibited in the regulatory floodway which would result in any increase in flood levels within the community during the occurrence of the base flood discharge.
- b All Subdivision proposals must be designed to assure that:
  - 1) Such proposals minimize flood damage;
  - 2) All public utilities and facilities are located and constructed to minimize or eliminate flood damage: and
  - 3) Adequate drainage is provided to reduce exposure to flood hazards.
- c Existing contour intervals of site and elevations of existing structure must be included on plan proposal.
- d There shall be a “routing procedure” which will circulate or transmit one copy of the development plan to the Conservation Commission, Planning Board, Board of Health and Building Inspector for comments which will be considered by the appropriate permitting board prior to issuing applicable permits

## **D Development Regulations**

The following requirements apply in the Flood Plain District:

- 1 With Zone A, where the base flood elevations are not provided on the FIRM, the Wetland Protection Act regulations require determination of base flood elevation data by engineering calculations. This information must be supplied to the Building Inspector for utilization toward meeting the elevation or flood proofing requirements, as appropriate, of the State Building code.
- 2 In the floodway, designated on the Flood Insurance Rate Maps, the following provisions shall apply:
  - a All encroachments, including fill, new construction, substantial improvement to existing structures, and other developments are prohibited unless certification by a registered professional engineer or architect is proved by the applicant demonstrating that such encroachment shall not result in any increase in flood levels during the occurrence of the 100-year flood.
  - b Any encroachment meeting the above standard shall comply with the flood plain requirements of the State Building Code.

## **E Permitted Uses**

The following uses of low flood damage potential and causing no obstructions to flood flows are encouraged provided they are permitted in the underlying district and they do not require structures, fill, or storage of materials or equipment:

- Agricultural uses such as farming, grazing, truck farming, horticulture, etc.
- Forestry and nursery uses.
- Outdoor recreational uses, including fishing, boating, play areas, etc.
- Conservation of water, plants, wildlife.
- Wildlife management areas, foot, bicycle, and/or horse paths.
- Temporary non-residential structures used in connection with fishing, growing, harvesting, storage or sale of crops raised on the premises.
- Buildings lawfully existing prior to the adoption of these provisions.

## **F Definitions**

**AREA OF SPECIAL FLOOD HAZARD** is the land in the floodplain within a community subject to a one-percent or greater chance of flooding in any given year. The area may be designated as Zone A, AO, AH, A1 – 30, AE, A99, VE or V.

**BASE FLOOD** means the flood having a one-percent change of being equaled or exceeded in any given year.

**DEVELOPMENT** means any manmade change to improved or unimproved real estate, including but not limited to building or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations.

**DISTRICT** means floodplain district.

**FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)** administers the National Flood Insurance Program. FEMA provides a nationwide flood hazard area mapping study program for communities as well as regulatory standards for development in the flood hazard areas.

**FLOOD BOUNDARY AND FLOODWAY MAP** means an official map of a community issued by FEMA that depicts, based on detailed analyses, the boundaries of the 100-year and 500-year floods and the 100-year floodway. (For maps done in 1987 and later, the floodway designation is included on the FIRM.)

**FLOOD HAZARD BOUNDARY MAP (FHBM)** means an official map of a community issued by FEMA where the boundaries of the flood and related erosion areas having special hazards have been designated as Zone A or E.

**FLOOD INSURANCE RATE MAP (FIRM)** means an official map of a community on which FEMA has delineated both the areas of special flood hazard and the risk premium zones applicable to the community.

**FLOOD INSURANCE STUDY** means an examination, evaluation, and determination of flood hazards, and, if appropriate, corresponding water surface elevations, or an examination, evaluation and determination of flood-related erosion hazards.

**FLOODWAY** means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation.

**LOWEST FLOOR** means the lowest floor of the lowest enclosed area (including basement or cellar.) An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor, **provided** that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of NFIP Regulations 60.3.

**MANUFACTURED HOME** means a structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes the term "manufactured home" also included park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. For insurance purposes, the term "manufactured home" does not include park trailers, travel trailers and other similar vehicles.

**MANUFACTURED HOME PARK OR SUBDIVISION** means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

**NEW CONSTRUCTION** means, for floodplain management purposes, structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by a community. For the purpose of determining insurance rates, NEW CONSTRUCTION means structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later.

**ONE-HUNDRED-YEAR FLOOD** – see BASE FLOOD

**REGULATORY FLOODWAY** – see FLOODWAY.

**SPECIAL FLOOD HAZARD AREA** means an area having special flood and/or flood-related erosion hazards, and shown on an FHBM or FIRM as Zone A, AO, A1-30, AE, 199, V, V1-30, VE.

**STRUCTURE** means, for floodplain management purposes, a walled and roofed building, including a gas or liquid storage tank, that is principally above ground, as well as a manufactured home. **STRUCTURE**, for insurance coverage purposes, means a walled and roofed building, other than a gas or liquid storage tank, which is principally above ground and affixed to a permanent site, as well as a manufactured home on foundation. For the latter purpose, the term includes a building while in the course of construction, alteration, or repair, but does not include building materials or supplies intended for use in such construction, alteration, or repair, unless such materials or supplies are within an enclosed building on the premises.

**SUBSTANTIAL DAMAGE** means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

**SUBSTANTIAL IMPROVEMENT** means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure either (a) before the improvement or repair is started, or (b) if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition, “substantial improvement” is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

**ZONE A** means the 100-year floodplain area where the base flood elevation (BFE) has not been determined. To determine, the BFE, use the best available federal, state, local or other data.

**ZONE A1-30** and **ZONE AE** (for new and revised maps) means the 100-year floodplain where the base flood elevation has been determined.

**ZONE AH** and **ZONE AO** means the 100-year floodplain with flood depths of 1 to 3 feet, where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

*\*6- Amended Sept. 29, 1981 – Article 4*

*\*97 Amended May 16, 2011 Article 38, section deleted and replaced*

## **2.6**

### **Aquifer and Watershed Protection District \*12, \*45**

#### **A. Purpose of District**

The purpose of this Aquifer and Watershed Protection District is:

- 1.) To promote the health, safety, and general welfare of the community by ensuring the adequate quality and quantity of drinking water for the residents, institutions and businesses of the Town of West Boylston;
- 2.) To preserve and protect existing and potential sources of drinking water supplies;
- 3.) To conserve the natural resources of the town; and
- 4.) To prevent temporary and permanent contamination of the environment.

## **B. Definitions**

- 1.) **“Aquifer”** means a geological formation which contains potable water and which yields or could yield a significant quantity of water
- 2.) **“Discharge”** means the pouring, dumping, spilling, leaking, pumping, depositing or injecting of any hazardous substance upon or into any land or water within the town.
- 3.) **“District”** means the zoning district defined to overlay the other zoning districts in the Town of West Boylston.

The Aquifer Protection District includes two recharge areas:

**Zone II:** The area of an aquifer which contributes water to a well under the most severe pumping and recharge conditions that can be realistically anticipated (180 days at safe yield with no recharge from precipitation) as defined in 319 Code of the Commonwealth of Massachusetts Regulations (CMR) 22.00.

**Zone III:** The land area beyond the area of Zone II from which the surface water and groundwater drain into Zone II, as defined in 310 CMR 22.00

- 4.) **“Groundwater”** means all the water beneath the surface of the ground.
- 5.) **“Hazardous Substance”** means any material, the presence of which in drinking water, poses a significant, actual or potential risk of injury to the health of person, animals, or plants, including, without implied limitations, any material which constitutes “hazardous waste” for the purpose of M.G.L. Chapters 21C, 21E and 310 CMR 30.00. The Town Clerk shall maintain a list of the substances so designated under M.G.L. Chapters 21C, 21E and CMR 30.00.
- 6.) **“Impervious”** means impenetrable by water.
- 7.) **“Map”** means the Aquifer and Watershed Protection Overlay District identified below.
- 8.) **“Mining”** means the removal or relocation of geological materials including, without implied limitation, topsoil, sand, gravel, ores and rock.
- 9.) **“Recharge Area”** means:
  - a.) A geological formation of permeable, porous material which allows the infiltration and/or collection of precipitation or surface water and the transmission of such water to an aquifer;
  - b.) Any wetland, stream, or body of water surrounded by, or adjacent to such an area; and
  - c.) The watershed of any such area, wetland, stream, or body of water.

- 10.) “Solid Waste”** means useless, unwanted, or discharge materials with insufficient liquid content to be free flowing, including, without implied limitation, scrap, junk, garbage, rubbish, inert fill material and landscape refuse.
- 11.) “Septic Waste”** means wastewater from normal domestic use containing normal kinds and concentrations of hazardous substances.
- 12.) “Town”** means the Town of West Boylston.

**C. Scope of Authority**

The Aquifer Protection District is an overlay district superimposed on the zoning districts. This overlay district shall apply to all new construction, reconstruction or expansion of existing buildings and new or expanded uses. Applicable activities or uses in a portion of one of the underlying zoning districts which fall within the Aquifer Protection District must additionally comply with the requirements of this district. Uses that are prohibited in the underlying zoning districts shall not be permitted in the Aquifer Protection District.

**D. Establishment and Delineation of the Aquifer Protection District**

For the purpose of this district, here are hereby established within the town certain groundwater protection areas consisting of aquifers or recharge areas and delineated on map as “Aquifer Protection District”. This map is at a scale of 1 inch to 800 feet and is entitled “Town of West Boylston Zoning Map”, dated June 2, 1975 and revised December 1992. This map is hereby made a part of the Town by-laws and is on file in the office of the Town Clerk.

**E. District Boundary Disputes**

If the location of the District boundary in relation to a particular parcel is in doubt, resolution of boundary disputes shall be through a Special Permit application to the Special Permit Granting Authority (SPGA). Any application for a Special Permit for this purpose shall be accompanied by an adequate documentation.

The burden of proof in such case concerning the proposed designation of the land at issue shall be upon the owner(s) of the land in question. The owner(s) may engage a geologist, hydrologist, soil scientist or a Massachusetts Professional Engineer experienced in groundwater evaluation or hydrology to determine more accurately the boundaries of the District with respect to the individual parcel(s) of land.

The SPGA may engage a professional geologist, hydrologist, soil scientist or a Massachusetts Professional Engineer experienced in groundwater evaluation or hydrogeology for the purpose of determining whether the land in question possesses the characteristics by which resource protection districts are delineated or whether land designated as lying within Zone II actually possesses the characteristics by which Zone II is delineated and may charge the owner(s) for the cost of making such determination.

The SPGA shall provide the owner(s) with a statement of work performed and the cost thereof when charging owner(s) hereunder.

**F. Use Regulations**

Within the District both the regulations of this Section 2.6 and the regulations of the underlying district shall apply, except that in case of a conflict or inconsistency between such regulations, the more restrictive regulations shall apply.

**1.) Permitted Uses**

The following uses are permitted within the Aquifer Protection District, provided all necessary permits, orders or approvals required by local, state or federal law are also obtained and remain in force for such use:

- a.) Conservation of soil, water, plants and wildlife;
- b.) Outdoor recreation not involving the use of motorized vehicles, nature study, boating, fishing and hunting;
- c.) Foot, bicycle and/or horse paths and bridges;
- d.) Normal operation and maintenance of existing water bodies and dams, splash boards and other water control supply and conservation devices;
- e.) Maintenance, repair, and enlargement of any existing structure, subject to Section 2 (Prohibited Uses) and Section 3 (Special Permit Uses);
- f.) Residential development, subject to Section 2 (Prohibited Uses) and Section 3 (Special Permit Uses);
- g.) Farming, gardening, nursery, conservation, forestry, harvesting and grazing subject to Section 2 (Prohibited Uses) and Section 3 (Special Permit Uses);
- h.) Construction, maintenance, repair and enlargement of drinking water supply related facilities such as, but not limited to, wells, pipelines, aqueducts and tunnels;
- i.) Operation and maintenance of roads and existing highways;
- j.) Individual sewage disposal systems that are designed in accordance with 310 CMR 15.00 or the Town of West Boylston's Board of Health Codes, whichever is more strict, provided that:
  - i.) The replacement or repair of a system, which will not result in an increase of design capacity over the original design, or design capacity of 310 CMR 15.00 whichever is greater, shall be exempted;
  - ii.) In the event cluster zoning subdivisions become allowed, the total sewage flow allowed shall be calculated based on the number of lots in the entire parcel.

## **2. Prohibited Uses**

- a.) Landfills and open dumps
- b.) Storage of liquid petroleum products except the following;
  - i.) Normal household use, outdoor maintenance and heating of a structure;
  - ii.) Waste oil retention facilities required by statute, rule or regulation;
  - iii.) Emergency generators required by statute, rule or regulation;



- iv.) Treatment works approved under 314 CMR 5.99 for treatment of ground or surface water;

Provided that such storage listed in items 1 through 4 above is in free standing containers within building or above ground with secondary containment adequate to contain a spill the size of the container's total storage capacity.

- c.) Landfilling of sludge or septage as defined in 310 CMR 32.05;
- d.) Storage of sludge and septic unless such storage is in compliance with 310 CMR 32.30 and 310 CMR 32.31;
- e.) Storage of deicing chemicals unless such storage, including loading areas, is within a structure designed to prevent the generation and escape of contaminated runoff or leachate;
- f.) Storage of animal manure unless covered or contained in accordance with the specification of the United States Conservation Service;
- g.) Earth removal consisting of the removal of soil, loam, sand, gravel or any other earth material (including mining activities) to within 100 feet of historical high groundwater as determined from monitoring wells and historical water tables fluctuation data compiled by the United States Geological Survey except for excavations for building foundations, roads or utility works.
- h.) Facilities that generate, treat, store or dispose of hazardous waste subject to M.G.L. 21C and 310 CMR 30.00 except the following:
  - i.) Very small quantity generators as defined under 310 CMR 30.00;
  - ii.) Household hazardous waste centers and events under 310 CMR 30.390;
  - iii.) Waste oil retention facilities required by M.G.L. Chapter 21, Section 52A;
  - iv.) Water remediation treatment works approved by DEP for the treatment of contaminated ground or surface waters.
- i.) Automobile graveyards and junkyards;
- j.) Treatment works that are subject of 314 CMR 5.00 including privately owned sewage treatment facilities except the following:
  - i.) The replacement or repair of and existing treatment works that will not result in a design capacity greater than the design capacity of the existing system(s);
  - ii.) The replacement of existing sub-surface sewage disposal system(s) with wastewater treatment works that will not result in a design capacity greater than the design capacity of the existing system(s);
  - iii.) Treatment works approved by the Massachusetts Department of Environmental Protection (DEP) designed for the treatment of contaminated groundwater;



- iv.) Sewage treatment facilities in those areas with existing water quality problems when it has been demonstrated to the Department of Environmental Protection's and the Special Permit Granting Authority's satisfaction both that these problems are attributable to current septic problems and that there will be a net improvement in water quality.
- k.) Storage of hazardous materials as defined in M.G.L. chapter 21E, unless in a free standing container within a building or above ground with adequate secondary containment adequate to contain a spill the size of the container's total storage capacity;
- l.) Industrial and commercial uses which discharge process water on site;
- m.) Stockpiling and disposal of snow and ice containing deicing chemicals if brought in from outside the district;
- n.) Storage of commercial fertilizers as defined in M.G.L. Chapter 128, Section 64, unless such storage is within a structure designated to prevent the generation and escape of contaminated runoff and leachate;
- o.) The use of septic system cleaners which contain toxic or hazardous chemicals;
- p.) Any floor drainage systems as defined in 310 CMR 22.21 (2) (a) 8;
- q.) All development in which more than 15 percent on the building lot (including one-half of the area portion of any new street which abuts the lot) is rendered impervious.

### **3. Uses and Activities Requiring a special Permit**

The following uses and activities are permitted upon the issuance of a Special Permit by the Special Permit Granting Authority (SPGA) under such conditions as they may require:

- a.) Enlargement or alteration of existing uses that do not conform to the Aquifer and Watershed Protection District;
- b.) The Application of pesticides, including herbicides, insecticides, fungicides and rodenticides for non-domestic or non-agricultural uses in accordance with state and federal standards. The Special Permit shall be granted if such standards are met. If applicable, the applicant should provide documentation of compliance with a Yearly Operating Plan (YOP) for vegetation management operations under 333 CMR 11.00 or a Department of Food and Agriculture approved Pesticide Management Plan (PMP) or Integrated Pest Management (IPM) program under 333 CMR 12.00;
- c.) The application of fertilizers for non-domestic or non-agricultural uses. Such application shall be made in a manner so as to minimize adverse impacts on groundwater due to nutrient transport, deposition and sedimentation;
- d.) Those activities that involve the handling of toxic or hazardous materials in quantities greater than those associated with normal household use is permitted in the underlying Zone (except as prohibited under Section 2). Such activities shall require a Special Permit to prevent contamination of groundwater;

- e.) The construction of dams or other water control devices, ponds, pools or other changes in water bodies or courses created for swimming, fishing or other recreational uses, agricultural uses or drainage improvements. Such activities shall not adversely affect water quality or quantity.

## **G. Procedures for issuance of Special Permit**

- 1.) The Special Permit Granting Authority (SPGA) under this by-law shall be the Planning Board. Such Special Permit shall be granted if the SPGA determines that the intent of this by-law as well as its specific criteria are met.

The SPGA shall not grant a Special Permit under this section unless the petitioner's application materials include, in the SPGA's opinion, sufficiently detailed information to support positive findings in relation to the standards delineated in Section 2.6 E and given in this section.

- 2.) Upon receipt of the Special Permit application under this Section 2.6, the SPGA shall, in addition to complying with Section 2.6, transmit one copy to the Water District, the Inspector of Buildings, the Board of Health, the Conservation Commission, and the Town Engineer/Department of Public Works for their written recommendations.

Failure to respond in writing within 35 days of receipt by the Board shall indicate approval or no desire to comment by said agency. The necessary number of copies shall be furnished by the applicant.

- 3.) The SPGA may grant the required Special Permit only upon finding that the proposed use meets the following standards in Section 2.6 of this by-law and shall:
  - a.) Not during construction or thereafter, adversely affect the existing or potential quality or quantity of water that is available in the Aquifer Protection District; and
  - b.) Be designed to avoid substantial disturbance of the soils, topography, drainage, vegetation and other water-related natural characteristics of the site to be developed.
- 4.) The SPGA may adopt regulations to implement this by-law to govern design features of projects. Such regulations shall be consistent with subdivision regulations adopted by the Town.
- 5.) The applicant shall file required number of 6 copies of a site plan and attachments. The site plan shall be drawn at a proper scale as determined by the SPGA and be stamped by a Massachusetts Professional Engineer. All additional submittals must be prepared by qualified professionals. The site plan and its attachments shall, at a minimum, include the following information where pertinent:
  - a.) A complete list of chemicals, pesticides, herbicides, fertilizers, fuels and other potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use;
  - b.) For those activities using or storing such hazardous materials, a hazardous materials management plan shall be prepared and filed with the Hazardous Materials Coordinator, Fire Chief and Board of Health.
  - c.) Proposed down-gradient locations(s) for the groundwater monitoring well(s) should the SPGA deem the activity a potential aquifer threat.

The Plan shall include:

- i.) Provisions to protect against discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion, leakage or vandalism including spill containment and cleanup procedures;
  - ii.) Procedures for indoor secured storage of hazardous materials and wastes with impervious floor surfaces;
  - iii.) Evidence of compliance with the Regulation of the Massachusetts Hazardous Waste Management Act 310 CMR 30, including obtaining an EPA identification number from the Massachusetts Department of Environmental Protection.
- 6.) The SPGA shall hold a hearing in conformity with the provision of M.G.L. chapter 40A, Section 9 within 65 days after the filing of the application and after the review by the Town boards, departments, commissions and the Water District.

Notice of the public hearing shall be given by publication and posting and by first-class mailing to "parties of interest" as defined in Chapter 40A, Section 11.

The SPGA shall obtain with each submission a filing fee (to be established by the SPGA) and a deposit sufficient to cover any expenses connected with the public hearing and review of the Special Permit application. Review fees shall be paid by the applicant before the Special Permit application review process shall begin. Any portion of the fee not used shall be returned to the applicant.

The decision of the SPGA and any extensive, modification or renewal thereof shall be filed with the SPGA and the Town Clerk within 90 days following the close of the Public Hearing. Failure of the SPGA to act within 90 days shall be deemed as a granting of the permit. However, no work shall commence until a certification is recorded as required by said Section 11.

- 7.) Written notice of any violations of this Section 2.6 shall be given by the Zoning Officer (Inspector of Buildings) to the responsible person as soon as possible after the detection of a violation or a continuing violation.

Notice to the assessed owner of the property shall be deemed notice to the responsible person. Such notice shall specify the requirement or restriction violated and the nature of the violation and may also identify the actions necessary to remove or remedy the violations and preventative measures required for avoiding future violations and a schedule of compliance.

A copy of such notice shall be submitted to the Planning board, the Board of Health, conservation commission, Town Engineer/Department of Public Works and Water District. The cost of containment, clean-up or other action of compliance shall be borne by the owner and operator of the premises. For situations that require remedial action to prevent adverse impact to the water resources within the Aquifer Protection District, the Town of West Boylston, the Inspector of Buildings, the Board of Health, or any of their agents may order the owner or operator of the premises to remedy the violation. If said owner and/or operator does not comply with said order, the Town of West Boylston, the Inspector of Buildings, the Board of health or any of their agents, if authorized to enter upon such premises under the terms of the Special Permit or otherwise, may act to remedy the violation. The remediation cost shall be the responsibility of the owner and/or operator of the premises.

## **H. Severability**

A determination that any portion or provision of this Aquifer Protection District is invalid shall not invalidate any other portion or provision thereof, nor shall it invalidate any Special Permit previously issued hereunder.

*\*12- Amended June 23, 1986 – Article; and  
\*45- May 16, 1994 – Article 2*

## **2.7**

### **Wireless Communications Services District \*47**

#### **1.) Purpose**

The purpose of this section is to establish a district in which wireless communications services may be provided with minimal harm to the public health, safety and general welfare. Specifically, the Wireless communication Services District has been to:

- a.) Protect the general public from hazards associated with wireless communications towers, and
- b.) Minimize visual impacts from wireless communications towers on residential districts within West Boylston.

For purposes of this section, “wireless communications services” shall mean the provision of the following types of services: cellular telephone service, personal communications and enhanced specialized mobile radio service. Such services, it is anticipated, will be provided via wireless communications towers, including antennas and accessory structures, if any.

#### **2.) Location**

The Wireless communications Services District shall be located on all land owned by the Town of West Boylston and on all land located in business and Industrial Districts. The Wireless communication Services District shall be construed as an overlay district with regard to said locations. All requirements of the underlying zoning district shall remain in full force and effect, except as may be specifically superseded herein.

#### **3.) Submittal Requirements**

As part of any application for a permit, applicants shall submit, at a minimum, the information required for site plan approval, as set forth herein at Section 3.6 applicants shall also describe the capacity of the tower, including the number and types of antennas that it can accommodate and the basis for the calculation of capacity, and any accessory structures.

#### **4.) Use Regulations**

A wireless communications tower (including antennas and accessory structures, if any) may be erected in a Wireless Communications Services District upon the issuance of a special permit by the Planning Board pursuant to Section 3.2E(3) subject to site plan approval, as set forth at Section 3.6, and subject to all of the following conditions:

- a.) To the extent feasible, all service providers shall co-locate on a single tower. Towers shall be designed to structurally accommodate the maximum number of foreseeable users (within a ten year period) technically practicable. **\*51** Horizontal co-location is not permitted. Co-locators must make application for a Special Permit to the Planning Board. All co-locations shall have the same lease term.

*\*51- Amended Oct. 20, 1997 – Article 22*

- b.) New towers shall be considered only upon a finding by the Planning Board that existing or approved towers cannot accommodate the wireless communications equipment planned for the proposed tower.
- c.) In no event shall any tower be located closer than two (2) miles to any other such tower.
- d.) **\*53** Tower heights and any appurtenant devices including antennas shall not exceed 100 feet (100') above the existing terrain

*\*53- Amended Oct. 20, 1997 – Article 24*

- e.) A tower shall not be erected nearer to any property line than a distance equal to the vertical height of the tower (inclusive of any appurtenant devices), measured mean finished grade of the lower base.
- f.) To the extent feasible, all network interconnections from the communications site shall be via land lines.
- g.) Existing on-site vegetation shall be preserved to the maximum extent practicable.
- h.) The tower shall minimize, to the extent feasible, adverse visual effects on the environment. The Planning Board may impose reasonable conditions to ensure this result, including painting and lighting standards.
- i.) Traffic associated with the tower and accessory facilities and structures shall not adversely affect abutting ways.
- j.) Applicants proposing to erect wireless communications towers, accessory facilities and structures on municipally-owned land or structures shall provide evidence of contractual authorization from the Town of West Boylston to conduct wireless communications services in municipally-owned property.

#### **NON-USE**

All unused towers or parts thereof or accessory facilities and structures which have not been used for two years shall be dismantled and removed at the owner's expense.

**\*52** Bonding shall be provided by any applicant prior to the issuance of a Special permit to ensure proper dismantling and removal of the tower from the site.

*\* 52- Amended Oct 20, 1997 – Article 23*

#### **EXEMPTIONS**

The following types of wireless communications towers are exempt from this Section 2.7:

- a.) Amateur radio towers used in accordance with the terms of any amateur radio service license issued by the Federal Communications Commission, provided that:
  - i.) The tower is not used or licensed for any commercial purpose;
  - ii.) The tower must have a cost or replacement value of less than \$100,000.00; and
  - iii.) The tower must be removed if the use is discontinued for six months; and
- b.) Towers used for the purposes set forth in M.G.L. Chapter 40A, Section 3.

## 5.) Definitions \*56

**Antenna:** The surface from which wireless radio signals are sent and received by a personal wireless service facility.

**Applicant:** A person or entity with an application before the Planning board for a permit for a personal wireless service facility

**Array:** A set of antennas for one carrier or service that are placed on a mount at a give height Above Ground Level (AGL), and spaced so as to avoid internal interference.

**Camouflaged:** A personal wireless service facility that is disguised, hidden, part of an existing or proposed structure or placed within an existing or proposed structure is considered "Camouflaged".

**Cellular Phone Service:** A mobile telephone service operating in the 800 megahertz (Mhz) spectrum.

**Co-location:** The use of a single mount on the ground by more than one carrier (vertical co-location and/or several mounts on an existing building or structure by more than one carrier

**Commercial Mobile Radio Service (CMRS):** Pursuant to Section 704 of the Federal Telecommunications Act of 1996, CMRS are any of several technologies using radio signals at various frequencies to send and receive voice, data and video. These are considered "functionally equivalent services" by the Telecommunications Act. (See definition below).

**Coverage:** The geographic area reached by an individual personal wireless service facility installation.

**Cross-polarized (or dual-polarized) antenna:** A low mount that has three panels flush mounted or attached very close to the shaft.

**Design:** The appearance of personal wireless service facilities including their materials, structural strength, color and shape.

**Electromagnetic Fields (EMF):** EMF are fields of radiation produced by all electromagnetic waves, from gamma rays to radio waves, some of which are harmful.  
Radiofrequency radiation (see definition below) produced by wireless facilities is one kind of electromagnetic field.

**Elevation:** The measurement of height above a given point.

**Enhanced Specialized Mobile Radio (ESMR):** Private land mobile radio with telephone services.

**Environmental Assessment (EA):** An EA is the document required by the Federal Communication Commission (FCC) and the National Environmental Policy Act (NEPA) when a personal wireless service facility is placed in an area which meets certain criteria, and therefore, may be environmentally impacted by or with that personal wireless service facility. The EA must show how any possible impacts can be mitigated.

**Equipment Shelter:** An enclosed structure, cabinet, shed or box at the base of the mount used to contain batteries and electrical equipment. This equipment is connected to the antenna by cable. Equipment shelters are also called "base transceiver stations" for Personal Communications Systems (PCS).

**Fall Zone:** The area on the ground within a prescribed radius from the base of a personal wireless service facility. The fall zone is the area within which there is a potential hazard from falling debris or collapsing material.

**Functionally Equivalent Services:** Cellular, PCS, Enhanced Specialized Mobile Radio and Paging are considered functionally equivalent services.

**Guyed Tower:** A monopole or lattice tower that is tied to the ground or other surface by diagonal cables.

**Horizontal Co-location:** the clustering of one mount next to another.

**Lattice Tower:** A type of mount that is self-supporting with multiple legs and cross-bracing of structural steel.

**Licensed Carrier:** A company authorized by the FCC to construct and operate a commercial mobile radio services system.

**Location:** The area where a personal wireless service facility is located or proposed to be located

**Modification:** The changing of any portion of a personal wireless service facility from its description in a previously approved special permit. Examples of modification are changes in design or ownership.

**Monopole:** A type of mount that is self-supporting with a single shaft of wood, steel or concrete and a platform (or racks) for panel antennas arrayed on top.

**Mount:** The structure or surface upon which antennas are mounted. There are four types of mounts

- **Roof-mount:** mounted on the roof of a building.
- **Side-mount:** mounted on the side of a building.
- **Ground-mount:** mounted on the ground.
- **Structure-mount:** mounted on a structure other than a building.

**Omni-directional antenna:** Often called a "whip" antenna, a thin rod that beams and receives a signal in all directions.

**Paging:** A service that provides tone, text and limited voice messaging.

**Panel Antenna:** A fiat surface antenna usually deployed in three directional "sectors" (0 degrees to 120 degrees, 120 degrees to 240 degrees and 240 degrees to 360 degrees) and used to concentrate or beam the signal into (or from) that sector only.

**PCS (Personal Communications Service):** An advanced form of radiotelephone services, capable of transmitting and receiving voice, data, text and video messaging. PCS operates in the 1850-1990 Mhz range.

**Personal Wireless Service Facility:** Facility for the provision of personal wireless services, as defined by the Telecommunications Act.

**Public Utility Facilities:** Fixed equipment or installations for electricity, gas, water, or communications services for the public, privately or publicly owned.



**Radiofrequency (RF) Engineer:** Someone with a background in electrical engineering or microwave engineering who specializes in the study of radio frequencies.

**Radiofrequency Radiation (RFR):** The emissions from personal wireless service facilities which can, in excessive amounts, be harmful to humans.

**Security Barrier:** A locked, impenetrable wall, fence or berm that completely seals an area from unauthorized entry or trespass.

**Separation:** The distance between one carrier's of antennas and another carrier's array.

**Site:** A portion of a subject property.

**Siting:** The method and form of placement of personal wireless service facilities on specific area of a subject property.

**Specialized Mobile Radio (SMR):** A group of services serving dispatch and data communication users, usually over a small geographic area. SMR operates over several frequencies in the 800 to 900 plus Mhz range.

**Unlicensed Wireless Services:** Commercial mobile services that can operate on public domain frequencies and that, therefore, need no Federal Communications Commission (FCC) license for each personal wireless service facility.

**Whip Antenna:** A very thin antenna, usually omni-directional.

**Wireless Communications Tower:** A structure (with Antennas, if any) designed to facilitate the following types of service: cellular telephone service, personal communications service, and enhanced specialized mobile radio service.

*\*47-Amended Jan. 27, 1997 – Article 14; and*

*\*56- Nov. 11, 1998 – Article 13*

## 2.8

## Multi-Story District \*63

### 1) Purpose

The purpose of this section is to establish an overlay district and a process in which buildings having a height greater than thirty-five feet (35') may be provided with minimal harm to the public health, safety and general welfare. The Multi-Story District has been created to allow greater flexibility of development and to minimize visual impacts from multi-story buildings on single-family residential districts within West Boylston.

### 2) Location

The Multi-Story District is an overlay district which is located on land consisting of the following properties denoted on the West Boylston Assessors' sheets revision date January 1, 2000; Map 172 Parcels 15, 16, 17, 18, 19; Map 176 Parcels 1, 4, 5, 6, 7; Map 179 Parcels 1, 2; Map 180 Parcel 2; Map 182 Parcels 1, 2, 3, 4, 5; and Map 183 Parcel 1. These parcels are shown on a plan entitled, "Multi-Story District Overlay Map", dated March 23, 2000, on file with the Town Clerk, Planning Board, and Building Inspector and is incorporated herein by reference.

### 3) Submittal Requirements



As part of any application for a Multi-Story Special Permit, applicants shall submit, at a minimum, the information required for site plan approval, as set forth in Section 3.6 of the Town of West Boylston zoning By-laws. Applicants shall also describe the architecture, solar access impact, and certify to the structural integrity and safety of the building.

#### **4) Use Restrictions**

Buildings proposed within the Multi-Story District having an average height of 35 feet or less do not require a Special Permit. A building having an average height greater than 35 feet, being the average of the heights, as measured from the ground surface to the eaves, at every exterior building corner, may be constructed in a Multi-Story District upon the issuance of a Special Permit by the Planning Board. The building and its associated site improvements are subject to site plan approval, as set forth in Section 3.6, and subject to all of the following conditions:

- a.) The maximum floor area ratio (FAR) shall be 1:2, meaning the total floor area of all floors contained within the boundaries of the exterior building faces shall be no more than half the total lot area.
- b.) The maximum building height shall be 68 feet.
- c.) The impervious lot coverage shall not be more than 70% of the lot. Impervious areas shall include, but not be limited to roof, paved or gravel parking and sidewalks and accessory equipment such as transformers, rubbish receptacles, etc.
- d.) The building shall be provided with complete peripheral access acceptable to the Fire Chief.
- e.) The building and appurtenances shall minimize, to the extent feasible, adverse visual effects on the environment, including solar access for abutting properties. The Planning Board may impose reasonable conditions to ensure this result, including painting and lighting standards.
- f.) A traffic analysis, stan1ped by a Professional Engineer specializing in Traffic Engineering, to assure acceptable interior circulation and that nearby roadways can effectively carry the additional traffic, shall be submitted for approval to the Planning Board.
- g.) All requirements of the underlying zoning district shall remain in full force and effect, except as may be expressly superseded herein.

*\*63- Amended May 21, 2001 – Article 38*

<b>2.9</b>	<b>Continuing Care Retirement Community Overlay District *78</b>
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**A**

*\*78- Amended Oct. 17, 2005 – Article 14*

#### **Purpose**

This Continuing Care Retirement Community Overlay District is established by the Town of West Boylston in order to achieve the following purposes:

- 1) The provisions of a variety of housing choices for elderly persons.
- 2) The provisions of professional services routinely used by elderly persons.

- 3) The design of site plans and structures adapted to the needs of the elderly population.

## **B Applicability \*92**

A Continuing Care Retirement Community (CCRC), as defined herein, may be allowed upon a grant of a Special Permit by the Planning Board upon any parcel of land situated within a General Residence District, within the Industrial District located south of Hartwell Street or in the Continuing Care Retirement Community Overlay District as shown on the Zoning Map.

*\*92- Amended May 19, 2008 – Article 46*

## **C Definitions**

For the purpose of this section of the by-law the following definitions shall apply:

- 1) **Elderly Person:** any person having reached the age of 55 years.
- 2) **Elderly Household:** any household having at least one person 55 years or older.
- 3) **Continuing Care Retirement Community (CCRC):** a development comprised of a dwelling or dwellings with residential services operated or sponsored as a coordinated unit by a corporation or organization, having among its principal purposes the provision of housing and associated services for persons 55 years or older.
- 4) **Coordinated Units:** a building or group of buildings under common management which provide housing and associated services which assist the elderly in maintaining an independent lifestyle.
- 5) **Associated Services:** a program of resident services primarily for the benefit of the residents of the CCRC.

## **D Types of Dwellings, Uses And Associated Services Permitted**

- 1) A CCRC may contain any or all of the following housing types, attached or detached, in any combination:
  - a) **Detached single family;**
  - b) **Multi-family;**
  - c) **Congregate:** a structure which provides a range of housing and support services. The structure may contain, but is not limited to the following uses:

Dwelling units with kitchen facilities; bedrooms with a bathroom and sitting area or without kitchen facilities; common, social and recreational areas such as dining rooms, libraries, and indoor and outdoor recreation facilities and gardening areas;
  - d) **Assisted or Catered Living:** buildings or structures other than a hospital or nursing home/institution designed to accommodate assistance with one or more activities of daily living, such as dressing, eating, bathing, walking or toileting;
  - e) **Nursing Care:** a facility which must be licensed by the Department of Public Health;
  - f) **Living quarters for support staff.**
- 2) A CCRC may contain any or all of the following uses and associated services, individually or in any combination, as part of dwellings or as separate structures, including, but not limited to:

- a) Dining rooms, coffee shops and related kitchen areas and facilities;
- b) Living rooms, libraries, music rooms, auditoriums, greenhouses;
- c) Lounges, card rooms, meeting rooms, and other social and recreational areas;
- d) Administrative offices, social service offices, educational uses;
- e) Mail rooms, gift shops, convenience stores;
- f) Medical offices, diagnostic and treatment centers, wellness centers, exercise areas, home health care centers;
- g) Professional offices;
- h) Barbers, hairdressers, beauty salons;
- i) Banks and ATM banking machines;
- j) Home health care;
- k) Adult and child care services;
- l) Cleaning services;
- m) Other uses, services and activities incident to the operation of a CCRC.

#### **E     Affordability \*91**

To assist the Town in creating units eligible for the Chapter 40B Subsidized Housing Inventory through means other than a Comprehensive Permit and to prevent the Town from falling behind in meeting the requirements for Affordable Housing as detailed in Massachusetts General Law Chapter 40B, CCRC projects with greater than five (5) dwelling units must provide Affordable Housing Units to serve low or moderate income households, as follows:

- 1)     **Percentage of Affordable Units:** At least 15% of ownership units must be Affordable Housing Units. At least 20% of rental units must be Affordable Housing Units.
- 2)     Living quarters for support staff, if any, are excluded from the Affordable Housing provision. Definitions, provisions and procedures for Affordable Units are governed by the provisions of Section 3.
- 3)     3.10 Incentive Zoning, except to the extent that there is a conflict between the bylaws. In case of a conflict, the provisions of this bylaw shall apply.

*\*91-Amended May 19, 2008 – Article 45*

#### **F     Design Objectives**

- 1)     Structure and site designs which blend the scale of residential units, institutional structures and professional office space;
- 2)     Minimization of traffic impacts and safe design of all ways, vehicular and pedestrian;
- 3)     Maximization of preservation of natural features and the protection of wetlands, scenic vistas and open spaces;
- 4)     Structure and site designs which meet the specific needs of the elderly;
- 5)     Site plan design which visually emphasizes building design and landscaped areas and minimizes the visual impact of parking areas;

- 6) Site plan design which creates open space by using cluster principles. At least 25% of the site shall be preserved as open space and maintained as natural vegetation or landscaped areas. Use of open space, except for passive recreation, plantings, footpaths, and agriculture shall be prohibited. Easements may be granted for the installation of underground utilities, provided all disturbed areas be restored to a natural state after construction. A restriction, enforceable by the Town of West Boylston, shall be recorded to ensure that such land shall be kept in an open, natural or landscaped state and not built upon for residential use or developed for accessory use such as parking or roadways. A landscape management plan shall be developed with restrictions to provide for maintenance of the open areas in a manner which will ensure its suitability for its function, appearance, cleanliness, and for proper maintenance of drainage, utilities and the like.
- 7) Site and structure design shall provide suitable means of access and egress to dwellings for handicapped persons. Enclosed walkways and/or unenclosed walkways connecting all buildings shall be permitted.
- 8) Structures shall be located on the site so as to provide for the privacy of residents adjacent to the CCRC.

## **G Site Requirements**

- 1) Minimum Lot Size: No CCRC shall be allowed on a parcel of land containing less than 10 acres.
- 2) Maximum number of units allowed shall be calculated by the following formula:  
  
Detached single-family: 5,500 square feet per/DU  
Multi-family (4 units or less): 5,500 square feet per/DU  
Multi-family (more than 4 units): 4,000 square feet per/DU
- 3) Notwithstanding the provisions of Section 4.3, the number of habitable buildings on a lot and the maximum number of dwelling units permitted per habitable building shall be determined by the Planning Board on a case by case basis.
- 4) Non-residential uses: the total area devoted to non-residential uses located in the buildings may not exceed twenty-five percent (25%) of the total area of the living areas.
- 5) The open space requirement is substituted for the more conventional rear and side yard requirements in order to provide flexibility in the protection of natural features; to maintain significant open space areas for the enjoyment of the residents; and to promote a variety of site plans tailored to the needs of the elderly.
- 6) While there are no yard requirements between buildings within the CCRC, all structures must conform to the Massachusetts Building Code with respect to building separation and fire walls.
- 7) Location and design of all structures shall be reviewed by the West Boylston Fire Chief with regard to accessibility of fire and other emergency vehicles.
- 8) No structure shall be more than thirty-five feet (35') in height measured from the average grade at the base of the building to the eave line.
- 9) Disposal areas shall be located in screened areas according to law standards contained in this zoning by-law.

## **H Roadway and Parking Requirements**

- 1) The following minimum parking standards shall apply to CCRC facilities approved under this section of the by-law. The Planning Board may waive the construction of parking until it is demonstrated that it is actually needed. Parking areas shall be designated as either to be constructed at the time of building construction or at a future date when it is demonstrated that it is needed. Where there is a mix of uses, the total parking area for the CCRC must equal or exceed the sum of the minimum requirements required by the following:
  - a) There shall be provided one parking space for each dwelling except as follows:
    - i.) **Congregate housing and assisted or catered living facilities:**  
One (1) parking space for every five (5) beds and one (1) parking space for each employee on the largest shift.
    - ii.) **Nursing Care facility:**  
One (1) parking space for every twenty (20) beds and one (1) parking space for every employee on the largest shift.
    - iii.) **Congregate housing and assisted or catered living facilities:**  
One (1) parking space for every five (5) beds and one (1) parking space for each employee on the largest shift.
- 2) All other parking and screening provisions of the West Boylston Zoning By-laws shall apply unless changed by this section.
- 3) Roads and utilities shall be designed and constructed in conformance with the Town of West Boylston Site Plan review standards. The Planning Board may modify said standards if it determines that such action will more acceptably meet the purposes of this section.

#### **I Sewer Disposal**

No special permit for a CCRC may be granted unless the proposed developer is or is to be connected to a municipal sewer system. No on site subsurface sewage disposal system shall be allowed.

#### **J Signs**

Signs will be regulated by Section 5.6 of the Zoning By-law.

#### **K Procedure**

- 1) Application, submission requirements, and procedures contained in Section 3.6 Site Plan Review shall be followed before a Special Permit for a Continuing Care Retirement Community may be granted.
- 2) Plans submitted in connection with this section may be drawn as may be appropriate to the size of the site, with the consent of the Planning Board.

# *Section 3-*

## *Use Regulations*

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**3.1****Basic Requirements \*30***\*30- Amended May 21, 1990 – Article 13*

No building, structure, or land shall be used for any purpose or in any manner other than is permitted and set forth in Section 3.2 Schedule of Use Regulations, of this by-law and in accordance with the following notation;

<b>Y</b>	Use Permitted
<b>SP</b>	Use Permitted only by Special Permit issued by the Board of Appeals
<b>SPR</b>	Use Permitted only by Special Permit issued by the Planning Board
<b>SPS</b>	Use Permitted only by Special Permit issued by the Board of Selectmen
<b>N</b>	Use Prohibited

**3.2****Schedule of Use Regulations \*88***\*88- Amended Oct. 15, 2007 – Article 13*

<b>A. Agricultural Uses</b>		<b>SR</b>	<b>GR</b>	<b>B</b>	<b>I</b>	<b>C</b>	<b>CLI</b>
<b>1</b>	Farms, stockfarms, greenhouses, nurseries and truck garden	Y	Y	Y	Y	Y	Y
<b>2</b>	Sale of farm or garden produce the major part of which is raised on the premises	Y	Y	Y	Y	Y	Y
<b>B. Residential Uses</b>		<b>SR</b>	<b>GR</b>	<b>B</b>	<b>I</b>	<b>C</b>	<b>CLI</b>
<b>1</b>	Detached One-family dwelling	Y	Y	Y	N	N	Y
<b>2</b>	Multi-family (4 units or less)	N	Y	Y	N	N	N
<b>3</b>	Multi-family (more than 4 units)	N	SPR	SPR	N	N	N
<b>4</b>	Motels or hotels	N	N	SPR	SPR	N	SPR
<b>5</b>	Bed and Breakfast	SP	Y	Y	N	N	N
<b>6</b>	Accessory apartments subject of Special Condition 3.4	SP	SP	SP	N	N	SP
<b>C. Recreational Uses</b>		<b>SR</b>	<b>GR</b>	<b>B</b>	<b>I</b>	<b>C</b>	<b>CLI</b>
<b>1</b>	Riding stables, subject to Special Condition 3.3 E	SP	SP	N	N	Y	SP
<b>2</b>	Golf Courses	SPR	SPR	SPR	SPR	N	SPR
<b>3</b>	Indoor commercial recreation	N	N	Y	SP	N	SP
<b>4</b>	Outdoor commercial recreation	N	N	SPR	SPR	N	SPR
<b>D. Institutional Uses</b>		<b>SR</b>	<b>GR</b>	<b>B</b>	<b>I</b>	<b>C</b>	<b>CLI</b>
<b>1</b>	Municipal structure or use	Y	Y	Y	Y	Y	Y

<b>2</b>	Religious use	Y	Y	Y	Y	Y	Y
<b>3</b>	Cemetery	N	N	Y	Y	Y	Y
<b>4</b>	Educational use exempted by Section 3, Chapter 40A, M.G.L.	Y	Y	Y	Y	Y	Y
<b>5</b>	Other educational use	SP	SP	SP	SP	SP	SP
<b>6</b>	Museums or art galleries	SP	Y	Y	SP	N	SP
<b>7</b>	Philanthropic, historical or charitable organizations	N	N	Y	Y	N	N
<b>8</b>	Private clubs, business associations, professional membership organizations	N	N	Y	Y	N	N

**E. Transportation & Utility Uses**

		<b>SR</b>	<b>GR</b>	<b>B</b>	<b>I</b>	<b>C</b>	<b>CLI</b>
<b>1</b>	Carriers of passengers for hire	N	N	Y	Y	N	N
<b>2</b>	Public utility facility, except wireless *49 communications towers <i>*49- Amended May 28, 1997 – Article 29</i>	SP	SP	SP	SP	SP	SP
<b>3</b>	Wireless Communications Tower Districts *47 <i>*47-Amended Jan. 27, 1997 – Article 14</i>	N	N	SPR	SPR	N	SPR

**F. Business Uses**

		<b>SR</b>	<b>GR</b>	<b>B</b>	<b>I</b>	<b>C</b>	<b>CLI</b>
<b>1</b>	Retail business not involving in manufacture on the premises except of product, the major portion of which is to be sold at retail on the premises by the manufacturer to the consumer	N	N	Y	Y	N	Y
<b>2</b>	Offices, business or professional <i>*15- Amended March 19, 1988 – Article 2</i>	N	N	Y	Y*15	N	Y
<b>3</b>	Eating places, except fast food and drive-in restaurants	N	N	Y	Y	N	Y
<b>4</b>	Fast foods and drive-in restaurants	N	N	SP	SP	N	SP
<b>5</b>	Animal Kennel or hospital	N	N	SP	SP	N	SP
<b>6</b>	Medical Clinic	N	N	SP	SP	N	SP
<b>7</b>	Bank or financial service	N	N	Y	Y	N	Y
<b>8</b>	Free standing automatic vending machine, such as soda, ATM, newspaper or photo developing	N	N	SP	SP	N	SP
<b>9</b>	Funeral Home	N	N	SPR	N	N	N
<b>10</b>	Wholesale Business	N	N	Y	Y	N	Y
<b>11</b>	Personal or business services such as barber shop, dry cleaning establishment or print shop	N	N	Y	Y	N	Y
<b>12</b>	Business centers (3 or more business uses which share a common parking area), up to a maximum of 100,000 sq. ft. of floor space	N	N	SPR	N	N	SPR



<b>13</b>	Automobile-fuel, services and repair	N	N	SP	N	N	N
<b>14</b>	Motion Picture Theaters	N	N	SP	N	N	SP
<b>15</b>	Building material stores	N	N	SP	SP	N	SP
<b>16</b>	Miscellaneous repair shops	N	N	SP	N	N	SP
<b>17</b>	Convalescent or nursing homes <b>*84</b> <i>*84- Amended May 21, 2007 – Article 40</i>	N	SP	SP	SP	N	N
<b>18</b>	Outdoor sales, such as motor vehicles or recreational vehicles	N	SP	SP	N	N	N
<b>19</b>	Warehousing, accessory to retail or wholesale business	N	N	Y	Y	N	Y
<b>20</b>	Any business allowed under this section operating between the hours of 2:00 a.m. and 6:00 a.m.	N	N	SP	SP	N	SP
<b>21</b>	Adult Entertainment <b>*54</b> <i>*54- Amended May 18, 1998 – Article 31</i>	N	N	N	SP	N	N

#### G. Industrial Uses

		<b>SR</b>	<b>GR</b>	<b>B</b>	<b>I</b>	<b>C</b>	<b>CLI</b>
<b>1</b>	Research laboratories	N	N	N	Y	N	SPR
<b>2</b>	Manufacturing or industrial use including processing, fabrication and assembly, employing unobjectionable motive power, utilizing hand labor or quiet machinery and process	N	N	N	Y	N	SPR
<b>3</b>	Retail and/or wholesale accessory to products manufactured or assembled on premises	N	N	N	Y	N	SPR
<b>4</b>	Warehousing or trucking company	N	N	N	Y	N	SPR
<b>5</b>	Removal of sand, gravel or loam subject to Section 5.4	Y	Y	Y	Y	N	SPR
<b>6</b>	Construction contractors	N	N	SP	SP	N	SP
<b>7</b>	Fuel suppliers	N	N	SPR	SPR	N	N
<b>8</b>	Rail freight yards	N	N	N	SP	N	N
<b>9</b>	Any industrial use allowed under this section which contains more than 10,000 sq. ft. as required by Section 3.6 B	N	N	N	SPR	N	SPR
<b>10</b>	Industrial Park (2 or more industrial uses which share a common parking area, common lot or contiguous lots under that same ownership)	N	N	N	SPR	N	SPR
<b>11</b>	Storage of dumpsters, trash containers roll-off trash containers, portable toilets, not in enclosed buildings <b>*43</b> <i>*43- Amended Feb. 24, 1992 – Article 7</i>	N	N	N	SP	N	N

#### H.

	<b>Cottage Uses</b>	<b>SR</b>	<b>GR</b>	<b>B</b>	<b>I</b>	<b>C</b>	<b>CLI</b>
<b>1</b>	Family day care home	Y	Y	Y	SP	N	Y

<b>2</b>	Home occupation, subject to Special Condition 3.5 * <b>31</b> <i>*31- Amended May 21, 1990 – Article 14</i>	SP	SP	Y	N	N	Y
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### 3.3 Special Conditions

- A. In a Business District, no building, structure, or premises shall be erected, altered, or used for any purpose, injurious, noxious, offensive, or tending to reduce property values in the same or adjoining districts by reason of emission of light, odor, fumes, dust, smoke, noise, and/or commercial waste or debris nor for any purpose other than as permitted in Section 3.2, F.
- B. In an Industrial District, no building shall be erected or altered, and no building or premises shall be used for any purpose, injurious, noxious, or offensive, or tending to reduce property values in the same or adjoining districts by reason of emission of odor, fumes, dust, smoke, vibration, sewage, and/or industrial waste, noise, danger of explosion fire or other cause, nor for any purpose other than as permitted in Section 3.2D.
- C. **\*50** A Special Permit for Public Utility Facility, with the exception of wireless communications towers, shall be issued if the Zoning Board of Appeals finds the resulting facility in harmony with the general purpose and intent of this bylaw

*\*50- Amended May 28, 1997 – Article 30*

- 1) Any building or structure enclosing a Public Utility Facility shall conform to all zoning and building requirements of the particular area.
- 2) A Public Facility shall be screened and landscaped to present an attractive appearance.
- 3) **\*32** This section shall not apply to permits granted by the Board of Selectmen as allowed under Section 22 of Chapter 166 of the Massachusetts General Laws.

*\*32- Amended May 21, 1990 – Article 16*

- D. **\*9** Family Day Care Home is defined as any residence licensed by the Commonwealth of Massachusetts which, on a regular basis, receives for temporary custody and care during part or all of the day children under seven years of age or children under sixteen years of age if such children have special needs; provided, however, in either case, that the total number of children under sixteen in a Family Day Care Home shall not exceed six, including participating children living in the residence.

Family Day Care Home shall not mean a private residence used for an informal cooperative arrangement among neighbors or relatives, or the occasional care of children with or without compensation therefore.

*\*9- Amended Sept. 17, 1984 – Article 9*

- E. **\*10** A Special Permit for a riding stable may be granted by the Board of Appeals if it is determined that the said use is in compliance with all state and local regulations governing the operation and that the term ‘Riding Stable’ may include the boarding of horses for a fee.

*\*10- Amended Oct 28, 1985 – Article 16*

**A. Definition:**

An accessory apartment is a separate housekeeping unit, complete with its own sleeping, cooking and sanitary facilities, that is substantially contained within the structure of a single family dwelling, but functions as a separate unit.

**B. Purpose:**

The purpose of the Accessory Apartment by-law are to:

- 1) Provide an opportunity for the older home owners who can no longer physically or financially maintain their single family home to remain in homes they might otherwise be forced to leave;
- 2) Make housing units available to moderate income households who might otherwise have difficulty finding homes in town;
- 3) Provide a variety of types of housing to meet the needs of its residents;
- 4) Protect stability, property values, and the single family residential character of a neighborhood; and
- 5) Legalize conversions to encourage the Town to monitor conversions for code compliance.

**C. Special Permit Procedures and Conditions**

The Board of Appeals may authorize an accessory apartment by Special Permit in any SR (Single Residence), GR (General Residence), or B (Business) District, provided the following standards and criteria are met:

- 1) The owner of the premises shall occupy one of the dwelling units, except for bona fide temporary absence.
- 2) Only one apartment will be created within a single family dwelling.
- 3) The accessory apartment shall be designed so that the appearance of the building remains that of a one family residence as much as possible.
- 4) Any new entrances shall be located at the side or the rear of the building.
- 5) The accessory apartment shall be clearly a subordinate part of the single family dwelling and any additions shall not increase the square footage of the original structure by more than 10 percent.
- 6) An accessory apartment shall be no greater than 700 sq. ft. nor shall it contain more than one bedroom.
- 7) At least three off-street parking spaces are available for use by owner(s) and tenant(s).

- 8) The Board of Health shall certify that the septic system is adequate for the disposal of sewage to be generated by both units, or that plans have been approved which will bring the system into compliance with the Board's regulations. No occupancy permit shall be issued until the Board of Health issues a Certificate of Compliance in accordance with Title 5 of the State Environmental Code.

#### **D. Special Permit Application Procedure**

The application for a Special Permit to the Board of Appeals for an accessory apartment allowed under this section shall also include the following:

- 1) A notarized letter from the owner(s) stating that he/they will occupy one of the dwelling units on the premises.
- 2) In order to provide for the development of housing for disabled and handicapped individuals, the Board of Appeals will allow reasonable waivers from this by-law where necessary to install features that facilitate access and mobility for disabled persons.

#### **E. Transfer of Ownership of a Dwelling With An Accessory Apartment**

- 1) The temporary special permit for an accessory apartment in a single family dwelling shall terminate upon the sale of the property or transfer of title of the dwelling. The permit holder shall notify the Building Inspector within thirty (30) days of the sale or transfer.
- 2) Upon receiving a special permit the owner(s) must file on the subject property a Declaration of Covenants at the Worcester County Registry of Deeds. The Declaration shall state that the right to rent a temporary accessory apartment ceases upon transfer of title. A time stamped copy of the recorded Declaration shall be provided to the Board of Appeals.
- 3) Upon transfer of title new owners wishing to maintain an accessory apartment must re-apply for a new special permit in accordance with the procedures specified herein.
- 4) Upon receiving a special permit the new owner(s) must file on subject property a Declaration of Covenants at the Worcester County Registry of Deeds. The Declaration shall state that the right to rent a temporary accessory apartment ceases upon transfer of title. A time stamped copy of the recorded Declaration shall be provided to the Board of Appeals.

#### **F. Accessory Apartments in Existence Before the Adoption of Accessory Apartment Bylaw**

It is the intent of this by-law to ensure that accessory apartments or conversions in existence before the adoption of this by-law are in compliance with the State Building Code Regulations.

##### **Application Procedure:**

- 1) The Board of Appeals may authorize, under a special permit and in conjunction with the Building Inspector, an accessory apartment. The Board will review each existing use on a case-by-case basis to determine if the dwelling conforms to State Building Code Regulations.

- 2) The applicant must follow the same procedure described in Sections D and E of this by-law, including the submission of a notarized letter declaring the owner occupancy and a Declaration of Covenants.
- 3) **\*33** Fines shall be levied in accordance with Sections 6.3 of the Zoning By-law, if the owner of an existing accessory apartment fails to apply to the Board of Appeals for a special permit for an accessory apartment before July 1991.

*\*33- Amended May 21, 1990 – Article 17*

#### **G. Fees**

Special Permit filing fees set by the Board of Appeals shall be included with the application for an accessory apartment. These fees shall be used to cover the cost of processing the application.

<b>3.5</b>	<b>Home Occupations <i>*31</i></b>
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*\*31- Amended May 21, 1990 – Article 14*

#### **A. Definition**

Home occupation: a business, profession, occupation or trade conducted for gain or support; or business activities associated with a non-profit organization and located entirely within a residential building, or a structure accessory thereto, which is secondary to the use of the building for dwelling purposes.

#### **B. General Requirements**

An owner of a single family dwelling in a SR or GR district may apply for a special permit from the Board of Appeals to convert a portion of the dwelling to a Home Occupation use subject to the following criteria and standards;

- 1) There shall be no exterior display, no exterior storage of materials and no other exterior indication of the home occupation or other variation from the residential character of the principal building.
- 2) One sign not to exceed two (2) square feet in area, which shall be attached to a building, is permitted but only to display the occupant's name and occupation.
- 3) The home occupation shall not generate traffic, parking, sewage, water use, or noise in excess of what is normal in the neighborhood.
- 4) No more than twenty-five (25) percent of the floor area of the residence shall be used for the purpose of the home occupation.
- 5) No more than one (1) non-resident of the dwelling may be employed in the home occupation. An off-street parking space shall be provided for the home occupation employee, in addition to those required for residential use.
- 6) The home occupation shall not create a hazard to persons or property, result in electrical interference, or become a nuisance.
- 7) The home occupation shall not discharge any hazardous substance as defined in Section 2.6 of this bylaw.

- 8) A special permit for a home occupation shall terminate upon the sale of the property or transfer of title of the dwelling or if the use allowed by the special permit has ceased for a period of one year. The permit holder shall notify the Building Inspector within thirty (30) days of the sale or transfer.
- 9) Upon receiving a special permit the owner(s) must file on the subject property a Declaration of Covenants at the Worcester County Registry of Deeds. The Declaration shall state that the right to the Home Occupation use allowed by this special permit shall cease upon transfer of the title. A time stamped copy of the recorded Declaration shall be provided to the Board of Appeals.
- 10) A Special Permit shall not be required for a Home Occupation within a Business District.

### **3.6 Site Plan Review \*26, \*64**

*\*26- Amended May 21, 1990 – Article 9; and  
\*64-May 20, 2002 – Article 34*

#### **A. Purpose**

The purpose of the Site Plan Review By-law hereby established is to protect the safety, public health, convenience and general welfare of the inhabitants of the town by ensuring that the design and layout of certain developments permitted by right or by special permit will constitute suitable developments and will not result in a detriment to the neighborhood or the environment.

#### **B. Scope - Projects Requiring Site Plan Review: \*44, \*46, \*59**

- 1) New construction or exterior expansion of any non-residential building or multi-family dwelling containing more than four (4) units. "Expansion" shall include a floor space increase of 5,000 square feet, or a floor space increase of 25% or more within any ten (10) year period, whichever is less.
- 2) The construction or enlargement of any multi-family dwelling containing more than four (4) units, or buildings accessory to such dwellings, including such dwellings on contiguous lots under the same ownership.
- 3) The construction, rehabilitation, or change of use of a building involving fifteen (15) or more parking spaces.
- 4) The construction or renovation of parking facilities involving fifteen (15) or more spaces, with the exception of normal maintenance.
- 5) Any use designated "SPR" in Section 3.2, "Schedule of Use Regulations".

*\*44- Amended Feb. 24, 1992 – Article 8;  
\*46- Oct 21, 1996 – Article 15; and  
\*59- Oct 18, 1999 – Article 25*

#### **C. Procedure:**

##### **1) Preliminary Site Plan:**

A Preliminary Plan may be submitted to the Planning Board and any waivers

concerning the required content may be requested at this time. The Planning Board shall act on any waiver requests submitted with the Preliminary Plan within thirty (30) days.

## 2) Submittal of Site Plan:

- a) An applicant for a Site Plan Review under this section shall file with the Planning Board twelve (12) copies of the site plan (drawn at a scale of 1" = 20', or other approved scale) accompanied by a completed Site Plan Review Application, all fees, and a list of abutting property owners. The date of filing with the Town Clerk shall be the official filing date.
- b) The Planning Board will distribute copies of the plan to the following municipal departments, boards and commissions for review and comment:
- c) Said departments, boards and commissions shall have thirty (30) days to submit recommendations/comments in writing to the Planning Board. Failure to report within the allotted time shall be interpreted as approval of the submitted site plan.

Planning Board	Water Department	Town Clerk
Board of Health	Building Inspector	Fire Department
Police Department	Conservation Commission	Review Engineer
Sewer Department	Superintendent of Streets and Parks	Municipal Lighting Plant

- d) The Planning Board is authorized to retain a registered professional engineer or other professional consultant to advise the Board on any or all aspects of the site plan. Site plan applicants shall pay all review fees before the site plan review process shall begin. Any portion of the fee not used shall be returned to the applicant.
- e) Site plan applicants shall submit application and review fees in accordance with the Planning Board's Site Plan Review Fee Schedule.
- f) Site plans depicting roadways, utilities, bridges, culverts, or drainage shall be prepared and stamped by a registered professional engineer licensed in Massachusetts. In specific cases, the Board may waive this requirement when deemed appropriate.

## 3 Public Hearing on Site Plans:

The Planning Board shall hold a public hearing within sixty-five (65) days of the receipt of an application and shall take final action within ninety (90) days from the time of the hearing, as provided for in MGL Chapter 40A, Sections 9 and 11. The Planning Board's final action, rendered in writing, shall consist of either:

- a) Approval of the site plan based upon determination that the proposed plan will constitute a suitable development and is in compliance with the standards set forth in this by-law; or
- b) Disapproval of the site plan based upon a determination that the proposed plan does not meet the standards set forth in this by-law; or
- c) Approval of the site plan subject to any condition, modification or restriction required by the Planning Board which will ensure that the project meets the standards set



forth in this by-law.

Failure of the Board to take final action upon an application for site plan review within the time specified above shall be deemed to be approval of said application. Upon issuance by the Town Clerk of an appropriate certification that the allowed time has passed without Planning Board action, the required building permits may be issued.

#### **D. Site Plan Contents and Submission Materials**

##### **1) Site Plan Contents:**

The purpose of this plan is to provide general information on the site, its existing conditions, and to illustrate and fully explain the proposed changes taking place within the site. All submitted site plans shall depict the following information:

- a)** Names, addresses, and telephone numbers of the owner, applicant, and person(s) or firm(s) preparing the plan.
- b)** Title, date, north arrow, names of abutters, and scale.
- c)** A vicinity sketch showing the Zoning District(s) and the location of the land/site in relation to the surrounding public street system and other pertinent location features within a distance of 1,000-feet.
- d)** Natural features including watercourses and water bodies, tree lines, significant trees, and other significant vegetative cover, topographic features, soil properties, and any other environmental features of the landscape that are important to the site design process.
- e)** Existing and proposed contours at intervals of 2-feet with spot elevations provided when needed.
- f)** Surveyed property lines including angles and bearings, distances, monument locations, and size of the entire parcel. A professional land surveyor licensed in Massachusetts must attest to said plan.
- g)** Lines of existing abutting streets and driveway locations within 200-feet of the site.
- h)** Location, elevation, and layout of existing and proposed storm drainage systems including catch basins and other surface drainage features.
- i)** Shape, size, height, location, and use of all existing and proposed structures on the site and approximate location of structures within 200-feet of the site.
- j)** Location of all existing and proposed easements, rights-of-way, and other encumbrances.
- k)** All floodplain information, including the contours of the 100-year flood elevation based upon the most recent Flood Insurance Rate Map for West Boylston, or as calculated by a professional engineer for unmapped areas.
- l)** Shape, size, height, and location of all proposed structures, including expansion of existing structures on the site and first floor plan(s), and building elevation(s) of the proposed structure(s).



- m) Location, flow, volume and timing patterns of existing and proposed traffic.
- n) Location, width, curbing and paving of all existing and proposed streets, rights-of-way, easements, alleys, driveways, sidewalks and other public ways.
- o) Location, size, and layout of all existing and proposed off-street parking, including loading zones. The plan shall indicate the calculations used to determine the number of parking spaces required and provided.
- p) Size and location of all existing and proposed public and private utilities, including but not limited to: water lines, sewage disposal facilities, gas lines, power lines, telephone lines, cable lines, fire alarm connection, and other utilities.
- q) Location, type, and size of all existing and proposed landscaping, screening, green space, and open space areas.
- r) Location and type of all existing and proposed on-site lighting including the proposed cone(s) of illumination to a measurement of 0.5 foot-candle.
- s) Location, size, and exterior design of all existing and proposed signs to be located on-site.
- t) Type and location of all existing and proposed solid waste disposal facilities and accompanying screening.
- u) Location of all existing and proposed on-site snow storage areas.
- v) A signature block for Planning Board approval.

## **2 Additional Submission Materials:**

- a) The applicant shall submit such material as may be required to ensure the proposed development will not pollute surface or ground water, cause soil erosion, increase runoff, change ground water levels, nor increase flooding during or after construction.
- b) The applicant shall submit such materials as may be required regarding design features intended to integrate the proposed new development into the existing landscape, to enhance aesthetic assets, and to screen objectionable features from neighbors.
- c) The applicant shall submit such materials as may be required regarding the projected traffic flow patterns into and upon the site for both vehicles and pedestrians and an estimate of the projected number of motor vehicle trips to and from the site for an average day and for peak hours.

## **E. Site Design Standards**

All site plan review applicants shall adhere to the following general principles when designing a site plan for land within the Town of West Boylston.

- 1) **Landscaping Within the Setbacks:** Site plan applicants are required to landscape the setbacks as part of the site plan approval process. Site plan applicants are expected to maintain the landscaping approved for the site and replace any landscaping that has not fully established itself within two growing seasons, after which all failed landscaping shall be replaced. Front yard setback landscaping shall consist of street trees and low-level

plantings. Landscaping within 20 feet of a driveway shall consist solely of low-level plantings such that vehicular and pedestrian sight lines are not restricted.

- 2) **Driveways and Curb Cuts:** Each property shall be limited to one entrance and one exit per street unless the Planning Board determines that the specific site conditions warrant an alternative configuration. At the main entrance, one combined entrance/exit location is encouraged to facilitate traffic movement. Unless deemed appropriate by the Planning Board, the combined entrance/exit shall be separated by a traffic island with separate in and out movements. For corner lots fronting on two public ways, the Planning Board may require the lot's exit to be located on the public way having the lesser traffic volume.
- 3) **Service Roads/Connection of Parking Lots:** To minimize turning movements onto adjacent public ways, developers are encouraged to provide internal circulation systems (service roads) that connect to adjacent developments (parking area to parking area). Site plans that propose service roads and/or connection of parking areas shall show on the plan how the connection of parking areas will be achieved and have a deeded agreement from the abutter.
- 4) **Shared Parking:** The Zoning Board of Appeals may allow a reduction of the required number of spaces in conformance with section 5.2.B.3 of this bylaw.
- 5) **Parking and Loading Areas:** All parking and loading areas shall be striped and marked on the ground as a condition of site plan approval. All off-street parking and loading spaces shall be provided with safe and convenient access and shall not be located within a public right-of-way or within required setbacks. Access locations shall be designed to encourage unimpeded traffic flow with controlled turning movements and minimum hazards to vehicular and pedestrian traffic. See Section 5.2.A.4 of the Zoning By-Laws for the Town's parking and loading standards.
- 6) **Parking Area Landscaping:** Site plans involving more than thirty (30) parking spaces shall provide interior landscaping covering not less than five percent (5%) of the total area of the parking area. In total, there shall be provided one shade tree placed within the parking lot for every ten (10) spaces and complemented by shrubs and other planting material. Such trees shall be at least two (2) inches in trunk diameter at the time of planting, and shall be located in planting beds at least six feet (6') in width or diameter. In case it can be shown to the Planning Board that the planting of trees is impractical, the Planning Board may authorize plantings and shrubbery instead of trees.
- 7) **Interior Walkways and Pedestrian Paths:** Site plans involving more than thirty (30) parking spaces shall provide walkways and pedestrian paths that safely connect the parking areas to the principal uses they will serve. Such walkways shall be constructed with brick, decorative pavers, or other materials, and may be bordered with fencing or shrubbery to clearly separate pedestrians from automobile traffic. Facilities and access routes for deliveries, service and maintenance shall be separated, where practical, from public access routes and parking areas. Car stops shall be provided to prevent parked cars from damaging trees, shrubs and curbing, and shall not disrupt pedestrian walkways.
- 8) **Stormwater Management (Grading and Drainage):** All site plan applicants must submit drainage calculations to show compliance with DEP (Department of Environmental Protection) Stormwater Guidelines.
- 9) **Lighting:** All exterior lights shall be designed and installed in such a manner as to prevent objectionable light at (and glare across) the property lines. Externally lit signs,

display, building and aesthetic lighting must be lit from the top and shine downward. Each outdoor luminaire shall be a full cutoff luminaire, and the use of decorative luminaires with full cutoff optics is desired. A full cutoff luminaire is an outdoor light fixture shielded in such a manner that all light emitted by the fixture, either directly from the lamp or indirectly from the fixture is projected below the horizontal plane. Developments shall eliminate glare onto adjacent properties through the use of lighting shields, earthen berms, or retention of existing natural vegetation. All outdoor lighting fixtures, including display lighting, shall be turned off within one hour after close-of-business, unless needed for safety or security, in which case the lighting shall be reduced to the minimum level necessary.

**F. Standards for Site Plan Review:**

In reviewing a site plan application, the Planning Board shall take the following items into consideration:

- 1) Compliance with all applicable provisions of the West Boylston Zoning By-Laws and Subdivision Regulations.
- 2) Traffic safety and ease of access at street and highway entrances and exits, taking into account grades, sight distances, distance between such exits and entrances, and the proximity of existing street and driveway entrances.
- 3) Safety and adequacy of driveway layout and pedestrian walkways; off-street parking areas; off-street loading areas for materials and products; adequate access for service and emergency vehicles such as electricity, gas, fuel, telephone, laundry, rubbish removal, water, sewage, fire, police, ambulance and other routine emergency vehicles.
- 4) Safe and adequate means of disposal of sewage, garbage and rubbish.
- 5) Safe and adequate water supply and distribution; including sufficient water and facilities for fire fighting on the site.
- 6) Safe and adequate storm drainage consistent with building and surface coverage, grades, slopes, soils and water table which shall result in zero increase in the rate of runoff from the site, as measured by the 2-Year (24-hour) and 10-Year (24-hour) Storm Event Standards; and there will be no negative impacts to downstream property-owners in a 100-year (24-hour) storm event.
- 7) Prevention of soil erosion during and after construction; provisions for an increase in the volume of runoff of surface water from the site and the protection of adjacent areas against detrimental or offensive uses on the site by the provision of adequate buffers against light, sight, sound, dust and vibrations.
- 8) Open space provisions and landscaping, including the maximum retention of on-site natural features.
- 9) Placement of underground utilities, night lighting and signs.
- 10) Compatibility of soil and subsoil's to type and intensity of development.

**G. Modifications to an Approved Site Plan:**

Once a site plan has been approved by the Planning Board, said plan shall not be changed, amended or modified without approval of the Board. There shall be only one final site plan in

effect for a parcel of land at a time.

#### **H. Construction of an Approved Site Plan:**

- 1) Construction on a site with an approved site plan must be started within one (1) year from the date of the Planning Board's approval of the site plan. Site plan approval may be extended for one (1) year at the discretion of the Board after receipt of a written request from the landowner, showing good cause. If one year has elapsed from the date of approval; and no extensions have been granted; or if one year has elapsed since the granting of said extension; the final site plan approval shall become null and void without requiring any further action by the Planning Board. This time period shall not include delays resulting from litigation.
- 2) No permit to build, alter or expand any building or structure, or change of use requiring Site Plan Review under this by-law shall be issued by the Building Inspector; nor shall any construction commence before a written statement of Final Approval has been issued by the Planning Board.
- 3) The Building Inspector may inspect a site under construction for compliance with the approved site plan.

#### **I. Enforcement:**

- 1) It shall be the duty of the Building Inspector to administer and enforce the provisions of this by-law.
- 2) The Planning Board shall provide a schedule of inspection fees to be paid by the applicant prior to the start of construction.
- 3) The Planning Board may use inspection fees paid by the applicant to offset the cost of hiring any additional engineers or inspectors necessary to monitor all phases of construction covered by an approved site plan.
- 4) The Planning Board may suspend its site plan approval when work is not performed as required by the approved site plan.
- 5) "As Built" plans, certified by a registered professional and noting any change from the approved plan, shall be filed with the Building Inspector and the Planning Board before a Certificate of Completion shall be issued.
- 6) The Building Inspector shall issue a Certificate of Completion when all construction has been performed and all other requirements have been met in compliance with the approved site plan. A copy of the Certificate of Completion will be filed with the Planning Board.
- 7) No Certificate of Occupancy shall be issued for any structure or use subject to site plan review unless a Certificate of Completion has been issued.
- 8) The Building Inspector may issue a Temporary Certificate of Occupancy for a period of one (1) year if the required construction has been substantially completed and the permitted uses of the development can be carried on in a safe and convenient manner.
- 9) Any person aggrieved by any decision of the Planning Board or Building Inspector

regarding a site plan review application may appeal that decision to the Zoning Board of Appeals as provided in Article 6.2 of this by-law.

## **J. Rules and Regulations**

- 1) The Planning Board may adopt such rules and regulations for carrying out its duties under this section. The Board may, where such action allowed by law, in the public interest and not inconsistent with the purpose and intent of this by-law, waive strict compliance with any requirement of this site plan review by-law or its rules and regulations.
- 2) The Planning Board may periodically amend or add rules and regulations relating to the procedures and administration of this site plan review by-law, by majority vote of the Board, after conducting a public hearing to receive comments on any proposed revisions. Such hearing dates shall be advertised in a newspaper of general local circulation, at least seven (7) days prior to the hearing date.

## **3.9**

## **Adult Entertainment \*55**

*\*55- Amended May 18, 1998 – Article 32*

### **A. Authority**

This bylaw is enacted pursuant to M. G. L. Chapter 40A and pursuant to the Town of West Boylston's authority under the Home Rule Amendment to the Massachusetts Constitution to serve the compelling town interests of limiting the location of certain adult entertainment uses, as defined and designated herein, in response to studies demonstrating their deleterious effects.

### **B. Purpose**

It is the purpose of this Adult Entertainment Bylaw to address and mitigate the secondary effects of the adult entertainment establishments and sexually oriented businesses that are referenced and defined herein. Secondary effects have been shown to include increased crimes, adverse impacts on the property values of residential and commercial properties and adverse impacts on the quality of life in the town.

All of said secondary impacts are adverse to the health, safety and general welfare of the Town of West Boylston and its inhabitants.

The provisions of this bylaw have neither the purpose nor the intent of imposing a limitation on the content of any communicative matter or materials, including sexually oriented matter or materials. Similarly, it is not the purpose nor the intent of this bylaw to restrict or deny access by adults to adult entertainment establishments or to sexually oriented matter or materials that are protected by the Constitutions of the United States or the Commonwealth of Massachusetts, nor to restrict or deny rights that distributors or exhibitors of such matter or materials may have to sell, rent, distribute or exhibit such matter or materials. Neither is the purpose or intent of this bylaw to legalize the sale, rental distribution or exhibition of obscene or other illegal matter or materials.

### **C. Definitions**

**Adult entertainment uses:** shall include the following uses:

- 1) adult bookstores, as defined by M.G.L. Chapter 40A, Section 9A;
- 2) adult motion picture theaters, as defined by M.G.L. Chapter 40A, Section 9A;
- 3) adult paraphernalia store, as defined by M.G.L. Chapter 40A, Section 9A;
- 4) adult video store, as defined by M.G.L. Chapter 40A, Section 9A;
- 5) establishment which displays live nudity for its patrons, as defined by M.G.L. Chapter 40A, Section 9A.

#### **D. Adult Entertainment uses by Special Permit; Criteria, Conditions**

Adult entertainment uses shall be prohibited in all zoning districts except as otherwise permitted in this bylaw and may be permitted only upon the granting of a special permit by the Board of Appeals. Such a special permit shall not be granted unless each of the following standards has been met.

- 1) The application for a special permit for an adult use shall provide the name and address of the legal owner of the establishment, the legal owner of the property and the manager of the proposed establishment.
- 2) No adult use special permit shall be issued to any person convicted of violating the provisions of M.G.L. Chapter 119, Section 63, or M.G.L. Chapter 272, Section 28.
- 3) Adult uses shall not be located within:
  - a) 50 feet from the nearest residential zoning district: or
  - b) 500 feet from the nearest church, school, park, playground, play field or youth center. The distances specified above shall be measured by a straight line from the nearest property line of the premises on which the proposed adult entertainment use is to be located to the nearest boundary line of a residential zoning district or to the nearest property line of any of the other designated uses set forth above.
- 4) All building openings, entries and windows shall be screened in such a manner as to prevent visual access to the interior of the establishment by the public.
- 5) No adult use shall be allowed to display for advertisement or other purpose any signs, placards or other like materials to the general public on the exterior of the building or on the interior where the same may be seen through glass or other like transparent materials any sexually explicit figures or words as defined in M.G.L. Chapter 272, Section 31.
- 6) No adult use shall be allowed to disseminate or offer to disseminate adult matter or paraphernalia to minors or suffer minors to view displays or linger on the premises.
- 7) The proposed adult entertainment use shall comply with the off-street parking requirements set forth in this bylaw.
- 8) No adult entertainment use shall be established prior to submission and approval of a plan by the Zoning Board of Appeals. The plan shall depict all existing and proposed buildings, parking spaces, driveways, service areas and other open uses. The plan shall



show the distances between the proposed adult entertainment use and the boundary of the nearest residential zoning district and the property line of each of the uses set forth in subsection D 3 above.

9) The Zoning Board of Appeals may retain professional assistance to review and give recommendations in assessing the application, at the expense of the applicant, pursuant to the board's rules and regulations for consultant fees.

10) The hours of operation shall be between 6:00 a.m. and 1:00 a.m.

**E. Adult Entertainment District**

Adult entertainment uses shall be allowed by special permit within the existing Industrial Zone, Adult entertainment uses shall be prohibited at any other location in the town. Adult entertainment uses proposed as accessory uses must comply with Section D above.

**F. Conditions**

The special permit granting authority may impose reasonable conditions, safeguards and limitations on time or use of any special permit granted and shall require that any such special permit granted shall be personal to the applicant, shall not run with the land, and shall expire upon expiration of the applicant's lease or upon sale of the subject property.

**G. Expiration**

A special permit to conduct an adult entertainment use shall expire after a period of two calendar years from its date of issuance and shall be renewable for successive two year periods thereafter, provided that a written request for such renewal is made to the special permit granting authority prior to said expiration and that no objection to said renewal is made and sustained by the special permit granting authority based upon the public safety factors applied at the time that the original permit was granted.

**H. Severability**

The provisions of this section are severable and, in the event that any provision of this section is determined to be invalid for any reason, the remaining provisions shall remain in full force and effect.

**3.10.**

**INCENTIVE ZONING**

*\*81- Amended May 15, 2006 – Article 33*

*\*96 Amended May 16, 2011 - Article 37 section deleted and replaced*

**3.10.A Purpose**

The purpose of this By-law is to encourage new, converted or renovated housing developments, where adequate public services exist, to include a proportion of housing units that are affordable. This bylaw is intended to ensure that such housing is affordable over the long-term and is provided in accordance with the requirements set forth by the Massachusetts Department of Housing and Community Development (“DHCD,” or the successor agency thereto), the West Boylston Master Plan, the West Boylston Housing Production Plan, and the West Boylston Open Space and Recreation Plan.

Accordingly, the provisions of the Section are designed to:

(1) increase the supply of affordable rental and ownership housing in the Town of West Boylston,

(2) assist in the achievement of the 10% Affordable Housing threshold established by the Commonwealth in M.G.L. Chapter 40-B, Section 20-23,

(3) encourage a greater diversity and distribution of housing to meet the needs of residents and employees of the Town of West Boylston.

### **3.10.B Definitions**

**Affordable Housing:** Housing which is **perpetually** restricted (to the maximum extent legally possible) for sale, lease or rental to low or moderate income households within specific income ranges as defined by this By-law; and at specific prices not exceeding an amount that is deemed Affordable for the subject household, or other standards as may be established pursuant to any Town, state or federal housing program designed to assist very low-, low-, and moderate income households and adopted by the Town of West Boylston.

**Affordable Housing Unit (AFU):** A dwelling unit that is sold or rented for an amount that is deemed Affordable for a household at or below 70% of the area median income as reported by DHCD or the U.S. Department of Housing and Urban Development (“HUD”). In calculating the price of an Affordable Unit, no more than 30% of the subject household’s income may be devoted to qualifying housing costs.

**Dwelling Unit:** A single habitable space with facilities which are used, arranged or designed to be occupied for living, sleeping, cooking and eating.

**Low or Moderate Income Household:** A household that earns no more than 80% of the Area Median Income, as published by DHCD or HUD or the successor agencies thereto.

**Very-low-income household:** A household having an income less than or equal to fifty (50) percent of the Area Median Income as published by DHCD or HUD or the successor agencies thereto.

### **3.10.C Applicability**

The provisions of this Section shall apply in all zoning districts, where residential use is permitted, but only in areas where adequate public sewerage and public water are available. The applicant shall follow the procedures stipulated in Section 3.6 Site Plan Review, with the Planning Board as the Special Permit Granting Authority (SPGA); or the West Boylston Subdivision Regulations (where applicable). All requirements and procedures must be satisfied before a Building Permit may be issued.

### **3.10.D Provision of Affordable Units**

All AFUs that result from this by-law shall be considered as Local Action Units and shall comply with requirements of the DHCD-Local Initiative Program, or another DHCD program that allows for inclusion of AFUs on the Town’s subsidized housing inventory. The following characteristics shall apply to the development:

- 1 **Density Bonus:** The Planning Board may allow increased density, based on project design and site appropriateness, as follows. Land that is considered wetland, water, or land containing slopes greater than 25% shall not be included in the area used to calculate the density bonus.
  - a) For all developments including a residential component with Single-Family residences the Planning Board MAY allow increased densities no greater



than one hundred and fifty (150) percent of the dwelling unit density that is allowed by right under the current zoning bylaw (1.5 units for every unit currently allowed – i.e. a project that is permitted to construct 10 units may construct up to 15 units with a special permit issued under this by-law), provided that a minimum of fifteen (15) percent of the total number of dwelling units are set aside as Affordable Housing Units, as defined hereunder.

- b) For all developments including a residential component with Multi-Family residences the Planning Board MAY allow increased densities no greater than two hundred (200) percent of the dwelling unit density that is allowed by right under the current zoning bylaw, provided that a minimum of twenty (20) percent of the total number of dwelling units are set aside as Affordable Housing Units.

- 2 **Dispersion:** Affordable Housing Units shall be dispersed throughout the development so as to ensure a true mix of housing; shall be comparable and indistinguishable from market rate units in the same development; shall have a similar mix of unit sizes proportional to the market rate units; and shall have all rights, privileges and responsibilities accorded to market rate units including access to all non-fee amenities within the development.
- 3 **Multiple Habitable Buildings Per Lot:** Notwithstanding the provisions of Section 4.3, the number of habitable buildings on a lot and the maximum number of dwelling units permitted per habitable building shall be determined by the Planning Board on a case by case basis. This paragraph only applies to parcels located in Zoning Districts where multifamily development is allowed.
- 4 **Distribution of Affordable Units:** Affordable Units shall be set aside, as a minimum, in compliance with Housing Production Plan and the Housing Needs assessment.
- 5 **Buffer Requirement:** When multi-family units are proposed, a buffer of at least 30' wide by 8' high vegetated visual buffer must be constructed in areas of the site that border single-residence uses or Zoning Districts.
- 6 **Relationship to public funding programs:** Developers may participate in public subsidy programs and still meet the requirements of this Section. Such participation will be subject to the approval of the subsidizing agency and to the unit price limitations of the funding program as well as those required by this Section. In case of conflicting price limitations, the lower price requirement shall prevail.
- 7 **Relationships to other organizations:** In consultation with the West Boylston Housing Partnership, or its successor, and the applicable subsidizing agency, the Planning Board may allow developers to work with a local nonprofit housing provider, to distribute, maintain or operate the units in accordance with the requirements of this section.
- 8 **Preference for Town residents and persons employed within the Town:** Unless otherwise prohibited by law or the requirements of the Local Initiative Program, not less than seventy percent (70%) of the Affordable Units shall be initially offered to residents of the Town of West Boylston, to persons employed within the Town of West Boylston, and persons who, although not currently residents of the Town, have previously resided in the Town of West Boylston for a minimum of five (5) years.

### **3.10.E Alternative Methods of Affordability**

This bylaw mandates that Affordable Units shall be provided onsite. However in certain exceptional circumstances the Planning Board may, at the formal written request of the applicant and with the support of the Housing Partnership, consider an alternative method of compliance. In granting such authorization, the Planning Board must find that the applicant has demonstrated that building the required Affordable Units on-site would create a significant hardship, or that such alternate method of compliance is in the best interests of the Town. A significant hardship shall be defined as being of such significance that the property cannot physically accommodate the required Affordable Units and/or related requirements, such as height, setbacks or parking due to topographic conditions, other than size, of the property. To have such a request considered, the burden of proof shall be on the applicant, who must make full disclosure to the Town of all relevant information. Approval of the alternate methods of compliance shall be only for the method described. **The Town may consider these only in rare and exceptional circumstances:**

- 1 Fees-in-lieu-of-units:** An applicant may contribute to the established local Affordable Housing Trust Fund to be used for the development of Affordable Housing in lieu of constructing and offering Affordable Units within the locus of the proposed development or at an off-site locus.
  - (a) Calculation of fee-in-lieu-of-units payment. The applicant for development subject to this bylaw may pay fees in lieu of construction of Affordable Units. For the purposes of this bylaw the fee-in-lieu-of-units of the construction or provision of Affordable Units will be determined as a per-unit cost as calculated from regional construction and sales reports. The Planning Board will make the final determination of acceptable value.
  - (b) Schedule of fees-in-lieu-of-units payments. Fees-in-lieu-of-units payments shall be made according to a schedule set by the Planning Board as a condition of approval.
  - (c) Creation of Affordable Units. Cash contributions and donations of land and/or buildings made to the Town or its Housing Trust in accordance with this section shall be used only for purposes of providing Affordable Housing for low or moderate income households. Using these contributions and donations, Affordable Housing may be provided through a variety of means, including but not limited to the provision of favorable financing terms, subsidized prices for purchase of sites, or Affordable Units within larger developments.
- 2 Off-site Location:** With authorization by the Planning Board as described above, Affordable Units may be constructed by the developer on an alternate site. The alternate site must be suitable for residential development, be within the Town of West Boylston, add to the Town's stock of Affordable Housing units and contain an appropriate mix of market-rate and Affordable Housing units. Off-site units shall be comparable in quality, size and type to the market-rate units being created, and include at least one Affordable Housing unit in addition to the number of Affordable Housing units that would have otherwise been provided on-site. Affordable Off-site Units allowed by this Bylaw may be located in an existing structure, provided that their construction constitutes a net increase in the number of dwelling units contained in the structure. Off-site units shall be subject to a schedule set by the Planning Board as a condition of approval.

### **3.10.F Procedures**

All projects shall comply with the procedures described in the Rules and Regulations of the West Boylston Planning Board for Incentive Zoning Special Permits and adopted by the Planning Board under the Home Rule Authority of Article 89 of the amendments to the Massachusetts Constitution, the Zoning Bylaws of the Town of West Boylston and Chapter 40A, Section 9 of the Massachusetts General Laws.

### **3.10.G Administration and Enforcement**

- 1 Authority:** The Planning Board shall be the authority to administer and enforce the application and approval process, and oversee construction, in accordance with recommendations from the Housing Partnership, or its successor. The Housing Authority shall be the enforcement agent regarding issues relative to certification of unit eligibility and implementation of the Housing Plan, following issuance of a final occupancy permit from the Building Inspector.
- 2 Legal restrictions:** Affordable Units shall be rented or sold subject to deed covenants, contractual agreements, and/or other mechanisms restricting the use and occupancy, rent levels and sales prices of such units to assure their Affordability in perpetuity. All restrictive instruments shall be subject to prior review and approval by the Planning Board and no occupancy permits may be issued until the Planning Board, in consultation with Town Counsel, issues such approval. All Subdivision and/or Homeowner or Condominium documents and fees shall be subject to review and approval by the Planning Board and the Town Counsel.
- 3 Timing of commitments:** All contractual agreements with the Town and other documents necessary to ensure compliance with this Section shall be executed prior to and as a condition of the issuance of a Building Permit or occupancy permit, as may be specified herein.
- 4 Timing of construction:** As a condition of the issuance of approval under this Section, the Planning Board may set a time schedule for the construction of both Affordable and market-rate units. When no schedule is specified as a condition of approval, all construction in the development must be completed within five (5) years of the date of approval.
- 5 Administration:** The Planning Board may adopt regulations to facilitate the administration of Section 3.10.

### **3.10.H Conflict with Other By-laws**

The provisions of this by-law shall be considered supplemental to existing zoning by-laws. To the extent that a conflict exists between this by-law, and others, the provisions of this by-law shall apply.

### **3.10.I Severability**

In case any paragraph or part of this Section should be for any reason declared invalid or unconstitutional by any court of last resort, every other paragraph or part shall continue in full force and effect.

*\*93 Amended Oct 18, 2010, Article 4*

### **3.11.A Purpose**

The purpose of this Residential Cluster Development (RCD) By-law is to provide an alternative residential subdivision design concept to increase the supply of desirable housing in the Town of West Boylston, while maintaining or creating additional open spaces within the community.

Accordingly, the provisions of this section are intended to:

- (1) allow Residential Cluster Development in all zoning districts where residential use is allowed, subject to Subdivision Approval.
- (2) allow greater flexibility and creativity in the design of residential developments,
- (3) preserve the rural character while increasing the supply of attractive housing in the Town of West Boylston,
- (4) encourage the permanent protection and preservation of open space, agricultural and forestry land, and to protect natural and/or historical resources and vistas; and
- (5) encourage a greater diversity and distribution of housing to meet the needs of West Boylston residents and employees of the Town.

### **3.11.B Definitions**

**Basic Density:** The number of residential dwelling units or lots (in a subdivision) as allowed in the zoning district without regard to this section and without waivers to the West Boylston Subdivision Regulations.

**Cluster Development:** A development pattern that arranges the layout of buildings in a compact area of the site so as to reserve a portion of the site for community open space or green space that is protected in perpetuity.

**Dwelling Unit:** A single habitable space with facilities which are used, arranged or designed to be occupied for living, sleeping, cooking and eating.

**Protected Open Space:** The portion of the tract(s) set aside in common ownership controlled by a Homeowners' Association and with a perpetual conservation restriction under G.L. c.184, §§31-32 held by the Town of West Boylston or by another governmental body or by a charitable corporation or trust. The Protected Open Space shall not consist of more than 50% of land that is considered wetland and/or contains slopes greater than 25%.

### **3.11.C Applicability**

The provisions of this Section shall apply in all zoning districts where residential use is permitted. The tracts must have a minimum area of five (5) acres. The applicant shall follow the procedures stipulated in Section 3.11.E, and the West Boylston Subdivision Regulations. All requirements and procedures must be satisfied before a Building Permit may be issued.

### **3.11.D Standards**

- (1) The maximum number of lots/dwelling units permitted within the RCD shall be based on the Basic Density unless granted a Special Permit under the Incentive Bylaw, Section 3.10 of the Zoning Bylaws.
- (2) The Protected Open Space shall be a minimum of forty (40) percent of the tract area.

- (3) A minimum vegetated buffer of 30 feet wide and 8 feet high shall be required along the perimeter of the development tract that borders public ways, Residential Districts or residential uses. This vegetated buffer shall provide visual screening during all seasons. Access ways shall be the only allowable openings. This vegetated buffer can be used as all or part of the Protected Open Space.
- (4) There shall be a minimum lot frontage of 50 feet for subdivided lots in the development tract.
- (5) Multi-family housing must be located where multi-family use is allowed according to Section 3.2.B Schedule of Use.
- (6) There shall be a minimum building setback of 50 feet from all tract perimeter boundaries.
- (7) There shall be a minimum 10 foot setback from internal lot lines.
- (8) There shall be a minimum lot size of 5,000 square feet. (Chapter 40A, Sec. 6).

#### **3.11.E Procedures**

All projects shall comply with the following procedures as applicable:

- (1) **Pre-application Meeting:** The applicant is encouraged to request a pre-application meeting with the West Boylston Planning Board to discuss the project proposal.
- (2) **Submit Planning Board RCD Application Package:** The applicant shall make a formal application that includes two design plans: one following conventional Preliminary Subdivision design (to determine the Basic Density), as well as the Residential Cluster Design subdivision to the West Boylston Planning Board. The applicant is required to comply with all other applicable Zoning and/or Subdivision Regulations not expressly specified in this section. Low impact development concepts and practices are strongly encouraged.
- (3) **Planning Board Review:** The Planning Board shall hold a public hearing regarding the application and follow the process in accordance with the Subdivision regulations. The Planning Board decision may require modifications, conditions and safeguards
- (4) **Planning Board Decision:** Following the close of the public hearing, the Planning Board shall issue Definitive Subdivision Plan Approval as the specific timeline of approval stipulates, and which shall contain conditions of approval.

#### **3.11.F Administration and Enforcement**

- (1) **Authority:** The Planning Board shall be the authority to administer and enforce this section
- (2) **Legal restrictions:** All restrictive instruments shall be subject to prior review and approval by the Planning Board and no occupancy permits may be issued until the Planning Board, in consultation with Town Counsel, issues such approval. All Subdivision and/or Homeowner or Condominium documents and fees shall be subject to review and approval by the Planning Board and review and approve as to form by Town Counsel.
- (3) **Timing of commitments:** All contractual agreements with the Town and other documents necessary to ensure compliance with this Section shall be executed prior to and as a condition of the issuance of a Building Permit or occupancy permit, as may be specified herein.
- (4) **Timing of construction:** As a condition of the issuance of approval under this Section, the Planning Board may set a time schedule for the construction. When no schedule is specified

as a condition of approval, all construction in the development must be completed within five (5) years of the date of approval.

(5) The Planning Board may adopt regulations to facilitate the administration of this section.

**3.11.G Conflict with Other By-laws**

The provisions of this by-law shall be considered supplemental to existing zoning by-laws. To the extent that a conflict exists between this by-law, and others, the provisions of this by-law shall apply.

**3.11.H Severability**

In case any paragraph or part of this Section should be for any reason declared invalid or unconstitutional by any court of last resort, every other paragraph or part shall continue in full force and effect.

# *Section 4-*

## *Dimensional Requirements*

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**4.1****Basic Requirements \*3**

*\*3- Amended Feb 25, 1980 – Article 20*

Except as otherwise provided in the General Laws, Chapter 40A, Section 5A and Section 7A, any lot used for dwelling purposes shall meet the requirements of Section 4.2.

- A. The frontage of a lot shall be measured as the straight line distance between the points of intersection of the side lot lines and the street lines.
- B. On all corner lots the required front yard dimensions shall apply from both street lines. The required side yard dimension shall apply from all other lot lines. In all cases one street line shall be accepted as the front street line for the measurement of another frontage.
- C. The minimum front yard dimensions required in the following schedule are to be measured from the street line where a plan for the street is on file with the Registry of deeds, or in absence of such plan, from a line twenty-five feet (25') from and parallel with the apparent centerline of the traveled way or street.
- D. The direction of side lot lines shall be as close as possible to perpendicular to the street line or to its tangent at the point of intersection of the side lot line. In no case shall the direction of the side lot line from an angle of less than 75 degrees with the street line or the aforesaid tangent.

**\*48** This angle must be maintained for a distance of 25 feet.

*\*48- Amended May 28, 1997 – Article 28*

- E. **\*16, \*34** The minimum lot width, which is the shortest distance between side lot lines, when measured anywhere between the lot frontage and the existing or proposed main building on the lot, shall not be less than the required minimum lot frontage.

*\*16- May 16, 1988 – Article 24; and*

*\*34- May 21, 1990 – Article 18*

**4.2****Schedule of Dimensional Requirements \*21, \*29**

DISTRICT	Min. Lot Size	Min. Lot Frontage (In feet)	Min. Yards (In feet)		
			Front	Side	Rear
Single Residence	40,000 square feet <b>*7</b>	120	25	10	10
General Residence	40,000 square feet <b>*7</b>	120	25	10	10
Business	1 acre	150	10 <b>*70</b>	10	10
Industrial	2 acres <b>*82</b>	150 <b>*71</b>	50	10	10
Commercial/ Limited Industrial <b>*86</b>	2 acres	150	50	10	10
Aquifer Protection	50,000 square feet <b>*13</b>	150	25	10	10



*\*7- Amended Sept. 17, 1984 – Article 7;  
\*13- June 23, 1986 – Article 3;  
\*70-71- May 20, 2002 –Articles 36-37;  
\*82- Oct 16, 2006 – Article 16; and  
\*86- Oct 15, 2007- Article 13*

- A. This shall not prevent the construction or placing of a dwelling or any other structure allowed by these by-laws in that district, on any lot not satisfying the foregoing minimum requirements, providing such lot has been continuously held in ownership separate from that of adjoining land since the date of pertinent amendments.
- B. Where there are buildings within one hundred feet (100') on either side which are nearer to or farther from the street line than 25', the Building Inspector, when granting the building permit, shall determine the setback distance to reasonably conform to the existing buildings, except that in all districts no portion of any building or structure shall hereafter be constructed nearer than ten feet (10') to the side or rear lot line.
- C. **\*73** The board of Appeals shall hear and decide upon applications for special permits for the reduction of the minimum residential lot frontage requirements outlined in Section 4.2 of this by-law. Special permits shall be granted only for residential lots with a minimum of 40,000 sq. ft. and only in those cases the Board finds that a lot frontage which is less than the required minimum, but not less than 100 feet, shall provide adequate access for the intended use of that lot and the Board may restrict or otherwise limit the use of said lot. Adequate access shall be defined for the purpose of this by-law as sufficient frontage to ensure safe access for vehicular traffic and for the provision of municipal services and utilities to the lot.

*\*21- Amended May 22, 1989 – Article 33; and  
\*29-Amended May 21, 1990 – Article 12  
\*73- Amended May 20, 2002 ATM*

<b>4.3</b>	<b>Modifications to Dimensional Requirements</b> <b>*8, *57, *60</b>
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**A. Multi-family Dwellings**

- 1) **\*83** \*For multiple dwelling use, the minimum lot area shall be 10,000 square feet for each dwelling unit on lots where sewer service is available and permitted. For multiple dwelling use on lots where sewer service is not available and permitted, the minimum lot area shall be 20,000 square feet for each dwelling unit.

*\*83- Amended Oct. 16, 2007 – Article 15*

- 2) The Maximum number of dwelling units per habitable building shall not be greater than twelve units.

**B. Appurtenant Open Space**

No yard or other open space required for a building by this by-law shall, during the life of such building, be occupied or counted as open space for another building.

**C. Projections** **\*35**

Nothing herein shall prevent the projection of steps, handicap access ramps, cornices, window sills, belt courses, and other ornamental features into any required yard.

**D. Corner Clearance**

Within the area formed by the lines of intersecting streets and a line joining points on such lines fifteen feet (15') distance from their point of intersection, or increase of a rounded corner of the point of intersection of their tangents, no structure and no foliage shall be maintained between a height three and one-half feet and a height eight feet above the plane through their curb grades.

**E. Green Belt**

Industrial Districts provision shall be made for the planting of a green belt, if required, and in a manner approved by the Planning Board. A "Green Belt" is defined as a protective screen which shall be planted and maintained in evergreen trees or shrubs, not more than fourteen feet apart or less than six feet high at the time of planting.

**F. Building Height \*17 \*63 \*72 \*87**

In all districts, except the Multi-Story District as specified within Section 2.8, and the Business District, no building shall be erected or altered to an average height of more than thirty-five feet (35'). Average height is calculated by taking the average of the heights, as measured from the ground surface to the eaves, at every exterior building corner. The maximum building height allowed within the Business District and Commercial/Limited Industrial District shall be fifty feet (50'). Where such building is proposed to be greater than thirty-five feet (35') tall, it shall be set back from the property line abutting a Residential District a horizontal distance the same as the height of the building.

*\*17- Amended May 16, 1998 – Article 25;*

*\*63- May 21, 2001 – Article 38;*

*\*72- May 20, 2002 – Article 36; and*

*\*87- Oct. 15, 2007 – Article 13*

**G. Habitable Buildings Per Lot**

Only one habitable building shall be placed on any one lot.

**H. Common Driveways \*57**

*\*57- Amended May 17, 1999 – Article 34*

For lots to be used for residential dwelling purposes where adequate access is provided across the frontage, the Planning Board may grant a Special Permit to allow common driveways for no more than four (4) lots that meet the zoning requirements. Common driveways shall not be used to satisfy zoning frontage requirements.

Common drives may be permitted to allow for more efficient traffic flow, to reduce traffic hazards from numerous individual driveways, to consolidate access to lots across wetland resources, and otherwise where, in the Planning Board's judgment, such an arrangement will be more advantageous to the neighborhood than separate driveways.

- 1) The applicant shall submit documents, plans, and profiles, stamped by a professional engineer, to the Planning Board for its approval of the proposed common driveway to assure compliance with the following standards for common driveways prior to the issuance of a building permit:

- a) The maximum grade shall be 12%. The minimum grade shall be 1%, with a 3% maximum grade within 50' of its intersection with a street right of way. The maximum length shall be five hundred feet (500'), and the angle of intersection with the street right of way shall be no less than 600.
  - b) The minimum width shall be fifteen feet (15') for the durable surface, with a three foot (3') wide improved gravel shoulder on at least one side. Driveways shall be surfaced with a durable, all-season non-dusting material, drained and suitably maintained to the extent necessary to avoid any nuisance by reason of dust, erosion or water flow onto streets or adjoining property. The common driveway shall be paved within the right of way of the street to the satisfaction of the Superintendent of Streets.
  - c) The common driveway shall exit onto the frontage street, and shall be located entirely within the boundaries of the lots served thereby. The plans shall show grading adjacent to the driveway to assure compliance with these standards.
  - d) The minimum easement width of 24 feet shall be created so that appropriate legal devices (easements or restrictive covenants which run with the land and hold the town harmless) shall be executed and recorded along with the deeds for the lots to assure that maintenance, repair, snow removal, de-icing, rubbish collection, and liability for the common driveway shall remain perpetually the responsibility of the private parties, or their successors-in-interest.
- 2) The applicant shall submit certified As-built plans and obtain the approval of the Building Inspector prior to the issuance of the occupancy permit.
  - 3) The Planning Board may establish appropriate procedures, including applications and review fees, for Common Driveways Special Permit Applications.

*\*8- Amended Sept 17, 1984 – Article 8; and  
\*60- Oct 18, 1999 – Article 26*

# *Section 5-*

## *Special Regulations*

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5.6	Signs and Billboards	66



**5.1****Accessory Use \*58, \*61**

In Single Residence, General Residence and Business Districts accessory use is permitted on the same lot with and customarily incident to any of the uses permitted in Section 3.2, and not detrimental to a residential neighborhood. All accessory uses shall comply with the dimensional requirements for the primary use to which they are an accessory, as stated in Section 4.2. Swimming pools and racquet courts are permitted as accessory structures in all districts and require a building permit. They shall be fenced or otherwise protected against intrusion as required by the State Building Code. Racquet court fencing shall be at least eight feet (8') high. Swimming pools shall comply with the Town's General Bylaws, Article XV, Section 6.

The term "accessory use" in this section shall not include:

- 1) Garage space for more than three automobiles except for owner's use;
- 2) The sale of produce unless the major portion thereof is raised on the premises.

*\*58- Amended Oct. 18, 1999 – Article 24; and*

*\*61-May 15, 2000 – Article 38*

**5.2****Off-street Parking and Loading \*18**

*\*18 Amended May 16, 1988 – Article 23*

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**A. General Provisions for Off-street Parking and Loading****1) Application**

- a) It is the intent of this by-law that all new buildings and land uses be provided with sufficient space located off-street for:
  - i.) the accessory parking of motor vehicles;
  - ii.) the standing, loading and unloading of motor carriers, to meet the needs of persons employed at or otherwise making use of such buildings or land under normal conditions.
- b) Any application for a permit for the erection of a new building, or for an alteration or change of use of an existing building that provides additional accommodations, or for the development of a land use shall include a plan for parking and loading for the new or expanded facilities or areas in accordance with Section 5.2 and 5.2 C.
- c) Where a building or land area is used by two or more categories of uses as defined under Section 5.2 B, the off-street parking and loading facilities required shall be not less than the sum of the requirements for the individual uses computed separately.

- d) Buildings and land uses legally in existence on the effective date of this by-law are not subject to these off-street parking and loading requirements, provided that any parking or loading facilities now serving such buildings or uses may not in the future be reduced below these requirements.

If existing parking or loading spaces exceed the requirements of this by-law, any excess shall be applied to the requirements for additions.

If existing parking or loading spaces are less than the requirements of this by-law, only the requirements for the additions need to be fulfilled with additional spaces.

- e) **\*58** For non-residential uses in the Business and Industrial Districts common driveways may be used to serve both parking and loading spaces, but no part of a designated loading space may be extended into the common driveway.

*\*58- Amended Oct. 18, 1999 – Article 24*

- f) No commercially licensed vehicles in excess of 18,000 lbs. gross vehicle weight, except school buses or a farm vehicle, and construction equipment during actual construction on the site, shall be parked overnight in a residential district.

## **2) Jurisdiction and Modification**

### **a) Jurisdiction:**

All off-street parking plans shall require Building Inspector approval. Such approval shall be required prior to the issuance of the building permit.

Parking plans and loading plans submitted for approval should identify elevations and contours of the finished site, existing right-of-way, entrances and exits, driveways, aisles, parking spaces, loading spaces, circulation, capacity, drainage, lighting, berms, curbing, fences, walkways and landscaped areas.

The Building Inspector shall examine said parking plans with respect to access, drainage, capacity, circulation and safety of pedestrians and vehicles using the facilities and using abutting streets.

### **b) Modification**

The Board of Appeals may, by special permit, modify the requirements for off-street parking and/or loading where it is demonstrated that with such modification there will be, under normal use, adequate space for parking and/or loading to provide for the needs of the subject building or uses.

## **3) Construction and Maintenance**

Parking and loading areas shall be graded, surfaced and drained so as to dispose all surface water through approved catch basins to preclude drainage onto other properties or streets.

Parking and loading areas located adjacent to a way shown on the official map shall maintain a permanent fence, berm, curbing, or its equivalent on or near the property line abutting the way.

A landscaped separation strip of at least five feet (5') shall be provided between a parking area and an adjoining public way, except in manufacturing districts.  
All off-street parking and loading facilities shall be maintained by the owner or operator in good repair, neat and orderly in appearance and free from refuse and debris.

Parking and loading areas shall be arranged for convenient access, egress and safety to pedestrians and vehicles.

#### **4) Design Standards**

All off-street parking and loading facilities shall be provided with adequate vehicular access. Backing directly onto a street shall be prohibited except for single and multi-family residences.

Adequate ingress and egress to the parking facilities by means of clearly limited and defined drives shall be provided for all vehicles. Said access shall be limited to well defined locations away from street intersections, and in no case shall there be unrestricted access along the length of the street.

#### **5) Lighting**

All lighting used to illuminate any off-street parking or loading shall be installed so that direct rays from such lighting shall not cause a public nuisance to adjacent property.

#### **6) Snow Storage**

Storage of snow in parking or loading facilities shall be arranged so as not to unduly reduce sight distances and visibility at entrances and exits and aisles intersection.

### **B. Off-street Parking (See Section 5.2, A for General Provisions)**

#### **1) Off-street Parking Requirements**

Parking spaces are to be provided according to the following units of measurement.

Multiple use requires space calculations for each applicable use. Capacities and areas include outdoor use where applicable.

Note: Utility, energy, corridor, stairway, restroom, and building maintenance areas are exempted from space assignment.

##### **a.) Residences**

Single Family	- Two (2) parking spaces per dwelling unit
Two Family & Multi-family*	- Two (2) parking spaces per dwelling unit
Hotel, Motel, Lodging, Rooming	- One (1) space per bedroom
Group, Dormitory	- One (1) space per resident car
Nursing, Convalescent & Rest Home	- One (1) space per three beds

**\*Note:** Housing designed specifically for elderly persons need provide only 50 percent (50%, of the space required above.

##### **b.) Place of Assembly**

Including Cultural, Sports, Religious, Recreational	- One (1) space for each five (5) persons accommodated in the assembly place
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**c.) Hospitals**

Exempted from further use  
calculations

Inpatient  
Outpatient

- One (1) space per patient bed excluding nursery
- Three (3) spaces for each room, booth or other unit exclusively assigned for outpatient treatment or counseling

**d) Drive-up Service including window, pump, wash, cash and carry**

Three (3) off-street waiting spaces will be provided leading to each service entrance or island and one (1) such space beyond each service exit.

A mechanized car wash with conveyor will provide eight (8) off-street waiting spaces leading to each line and two (2) spaces beyond the exit end.

**e) Professional offices including clinics, barbershops and beauty salons**

Three (3) parking spaces for each room, booth, or other unit assigned for client treatment or counseling.

**f) Bowling alleys and lanes**

Four (4) parking spaces per lane or alley.

**g) Public garage**

Three (3) parking spaces for each bay or stall used for service or repair.

**h) Restaurant, Cocktail Lounge or Nightclub**

One (1) parking space for each four (4) seats in the dining area, plus one (1) parking space for each two (2) seats in the cocktail area or those areas where meals are not served or where meals are self-service.

**i) Quick, Service, Fast Food, Drive-in Establishment**

One (1) parking space for each forty (40) square feet of gross floor area.

**j) Retail Areas For Sales and Display of Portable Goods and Related**

Retail Services One (1) space for each 250 square feet in such use.

**k) Office Areas Including Reception, Desk Drafting Bench, Data Processing**

Manufacturing Areas For Portable Goods One (1) space for each 500 square feet in such use

**l) Wholesale Areas For Sales And Display; Retail areas For Sales And Display of Non-portable Goods; Freight Handling Area**

One (1) space for each 1,000 square feet in such use.

**m) Storage and Warehousing Areas**

One (1) space for each 3,000 square feet in such use.

**n) Automobile/Vehicle Sales \*66**



One (1) customer parking space for every four hundred (400) square feet of showroom and office, plus one (1) customer parking space for every two thousand (2,000) square feet of exterior display area.

*\*66- Amended May 20, 2002 – Article 35*

## **2) Location and Dimensions**

- a) Required parking shall be provided on the same lot with the main use it is to serve. In business and manufacturing districts, required parking shall be provided through the same ownership within one thousand feet (1,000') of the use it is to serve.

**b) Dimensions of Parking Space:**

Each parking space shall not be less than nine feet (9') in width and eighteen feet (18') in length. Aisles shall provide adequate width for vehicles to enter or to leave parking spaces in a single motion. All vehicles must be parked completely within the property lines.

**c) Setbacks \*36**

In Business and Industrial Districts all parking spaces shall be provided only at the side or to the rear of buildings, but not within the required side and rear yard setbacks.

Parking areas shall be set back a minimum of five feet (5') from any building wall and ten feet (10') from any boundary lines.

Driveways may occupy any part of the required front or side yards. Any portion of a parking area not used for parking space or circulation shall be landscaped and protected.

*\*36- Amended May 21, 1990 – Article 20*

- d) No driveway in a Business District or Industrial zone shall be located closer than fifty feet (50') to any street intersection measured along the street line.
- e) **\*67** Uses that propose drive-through facilities such as automatic teller machines and restaurants shall be designed to be an integral component of the building complex and shall not be located within a public right-of-way. Such uses shall be safely and conveniently accessible from surrounding uses via a clearly defined circulation system that minimizes points of conflict between vehicular and pedestrian traffic. The queue length shall be arranged so that there will be no spillage onto a public right-of-way. See Section 4.B.1.d of the Zoning By-Laws for the Town's parking standards for drive-through facilities.

*\*67- Amended May 20, 2002 – Article 35*

- f) **\*68** Use of Parking Areas for Retail Sales: The use of designated parking areas for outdoor sales events shall be limited to five (5) days per year.

*\*68- Amended May 20, 2002 – Article 35*

## **3) Shared Parking \*69**

The Board of Appeals shall hear and decide upon applications for Special Permits for the reduction of the required number of parking spaces by up to twenty-five percent (25%), if it can be demonstrated that two or more uses within a single development can share parking areas due to different hours of normal activity.

*\*69- Amended May 20, 2002 – Article 35*

## **C. Off-Street Loading (See Section 5.2, A for General Provisions)**

### **1) Table of Loading Requirements**

Gross Floor Area Per Tenant (square feet)	Number of Required Loading Spaces
0 –10,000	0
10,001 – 50,000	1
50,001 – 100,000	2
100,001 – 200,000	3
200,001 – 400,000	4
Each additional 20,000 sq. ft.	1

### **2) Location and Dimensions of Required Loading Spaces**

#### **a) Location**

Loading spaces located within one hundred feet (100') of a residence district shall have material handling activities relating thereto enclosed.

In an Industrial Park District all loading and delivery facilities shall be located either at the side or rear of the building(s) they are designed to serve, but not within the required side and rear yard setbacks.

#### **b) Dimensions of Loading Space**

Each loading space shall be twelve feet (12') in width and fifty feet (50') in length and shall be entirely contained within the property lines.

## **5.3**

## **Prohibited Uses**

### **A. Refuse Disposal**

The dumping of rubbish except in a municipal dump is prohibited.

### **B. Trailer or Mobile Home**

The keeping of a trailer or mobile home on any lot within the town for use as a dwelling is prohibited.

### **C. Unregistered Motor Vehicle**

Except by a person licensed under General Laws, Chapter 140, Section 59, no parcel of land shall be used for the keeping of more than one unregistered motor vehicle (farm vehicles excluded) on any lot, unless said motor vehicle is stored within a building, for a period of more than six months, provided, however, that the Board of Selectmen may grant a special permit to keep up to two unregistered motor vehicles on any lot if it finds that such keeping is (1) in harmony with the general purposes and intent of this by-law; (2) will not adversely affect the neighborhood; and (3) will not be a nuisance.

All such permits granted shall not run with the land and shall be of one year in length but may be renewed.

**D. Screening \*37, \*65**

Outside storage areas for materials, equipment, vehicles, or trash, shall be provided with an opaque screen a minimum of five feet (5') in height to shield such areas from view from adjacent streets and residential districts. Such screens may consist of walls, fences, landscaped berms, evergreen plantings, or any combination thereof. Fences shall consist of wood, stone, or brick materials; chain link fences are prohibited. Walls or fences exceeding four and one-half (4 ½) feet in height shall have plantings on any side facing a residential district. Elements such as HVAC units, telephone boxes, or electrical transformers shall be screened from public view through use of landscaping, berms, or fences and shall be as unobtrusive as possible. Where possible, HVAC units shall be screened or located behind roof ridge lines so they are not visible from the front view of the building.

In locations where business or industrial uses are bordered by Residential Districts, a buffer zone of at least thirty feet (30') shall be observed for buildings, parking or storage. This area shall be landscaped and suitably screened as required above.

Expansion or reconstruction of Business and Industrial uses on non-conforming lots that fail to meet the above setback requirement shall be required to maintain a solid wooden fence, no less than five feet (5') in height. Landscaping in the form of deciduous and evergreen trees and shrubs shall be required on both sides of the fence.

In locations where potential health or safety hazards may arise, a fence, six feet (6') in height is required to deter children and animals from entering the premises. Landscaping in the form of deciduous and evergreen trees and shrubs shall be required on both sides of the fence.

The Board of Appeals may, by Special Permit, modify the requirements for screening contained in this section, where it can be demonstrated that with such modification there will be adequate screening and that such modification is in harmony with the intent of this by-law.

*\*37- Amended May 21, 1990 – Article 21; and  
\*65- May 20, 2002 – Article 34*

**5.4**

**Earth Removal and Relocation Activities \*14, \*24**

Removal or relocation of geologic materials including, without implied limitation, topsoil, sand, gravel, rock, borrow, sand, humus, peat, clay, loam or other earth is permitted only in accordance with ARTICLE XXII of the General By-laws of the Town of West Boylston, except that blasting or drilling of rock or ledge for sale or resale is prohibited in residential zones.

*\*14- Amended Oct 19, 1987 – Article 3; and  
\*24- May 22, 1989 – Article 40*

**5.5**

**Lot Coverage**

In Industrial Districts buildings shall cover not more than forty percent (40%) of the total area on each lot provided, however, that if the particular lot contains less than one acre, the buildings thereon shall cover not more than thirty percent (30%) of the total area of the lot.

## 5.6

## Signs and Billboards *\*4, \*38, \*42*

*\*4- Amended Feb 23, 1981 – Article 1*

*\*38- Amended May 21, 1990 – Article 22*

*\*42- Amended May 20, 1991 – Article 18*

### A. Purpose

This section 5.6 of this by-law is adopted for the regulation and restriction of signs within the Town of West Boylston in order to prevent or minimize damage to the environment, to protect and enhance the visual environment of this town and the safety, convenience and welfare of its residents.

### B. Authority and Interpretation

This section 5.6 of this by-law as adopted as a zoning by-law pursuant to Chapter 40A of the General Laws.

### C. Definitions

- 1) **Sign:** Any symbol, design or device used to advertise, identify or inform persons about products, premises, person or activity.
- 2) **Area of Sign:**
  - a) The area of a sign shall be considered to include all lettering, wording and accompanying designs and symbols, together with the background on which they are displayed, any frame around the sign, and any “cutouts” or extensions, but shall not include any supporting structure or bracing.
  - b) The area of a sign consisting of individual letters or symbols attached to or painted on a surface, building, wall, or window shall be considered to be that of the smallest rectangle or triangle which encompasses all of the letters and symbols.
  - c) The area of a sign consisting of a three-dimensional object shall be considered to be the area of the largest vertical cross-section of that object.
  - d) Only one side shall be counted in computing the area of a double faced sign.
- 3) **Accessory Sign:** Signs related to persons, products or business transacted on the premises on which the sign is erected or maintained.
- 4) **Non-Accessory Sign:** All other signs.
- 5) **Temporary Sign / Moveable Sign:** Any sign capable of readily being moved from one location to another and having no permanent or in-ground supporting structures or braces. This includes wheeled trailers whose primary function is to carry a sign which can be loaned, rented or leased. It excludes signs on cars, trucks, buses or trailers that

identify the owner or products of the owner whose function is other than pure advertising.

- 6) **Sign Structure:** The supports, uprights, braces and framework of the sign.
- 7) **Wall Sign:** Any sign attached to or erected against the wall of a building with the display surface of the sign in a plane parallel to the plane of the wall which shall not project more than twelve inches (12") from the face of the building.  
  
Any sign consisting of separate self-contained letters attached to a building shall be considered a wall sign. Banners are not permitted.
- 8) **Projecting Sign:** Any sign other than a wall sign suspended from or supported by a building.
- 9) **Standing Sign:** Any sign that is not attached to, erected on, or supported by a building.
- 10) **Roof Sign:** Any sign attached to or erected on the roof of a building.
- 11) **Directional or Informational Sign:** Any sign which is necessary for the safety and direction of vehicular or pedestrian traffic.
- 12) **Directory Sign:** Any sign listing the name and location of the occupants of a site or building.
- 13) **Window Sign:** Any sign designed to be visible from the exterior by being placed in, on, or behind a window or outside glass door but does not include merchandise offered for sale.
- 14) **Erected:** Attached, constructed, reconstructed, altered, enlarged or moved. "Erected" shall not mean repainted, cleaned, repaired or maintained. "Altered" includes changes in the letter or symbols on the sign. This does not pertain to marquee type signs with removable letters.
- 15) **Business Center:** Any aggregation of three or more business or industrial uses which share a common parking area.
- 16) **Political Sign:** A sign designed to influence the action of voters for the passage or defeat of a measure, or the election of a candidate to a public office at a national, state, county or local election.

#### **D. General Requirements**

- 1) **Movement:** No sign shall contain any moving, flashing or animated lights, reflective elements or visible or moving parts. No rotating or pivotal signs shall be permitted.
- 2) **Traffic and Directional Signs:**
  - a) Traffic and directional signs owned and installed by a governmental agency are permitted and not subject to any of the terms and conditions set forth in this Section 5.6.
  - b) Informational and directional signs, located on the property to which such informational and directional messages pertain, containing no advertising are permitted to direct traffic flow, indicate parking space, identify points of interest or

provide other essential information to guide vehicular or pedestrian traffic flow. Such signs shall not exceed two (2) square feet.

- 3) **Public, Civic and Non-profit Organizations:** Permanent or temporary signs which do not comply with this by-law may be authorized by a Sign Permit granted by the Inspector of Buildings to a public, civic or non-profit organization. \*95

*\*95- Amended May 19, 2008 – Article 48*

- 4) **Sight Triangle:** No signs shall be constructed in the area at the corner of any public way within the radius of one hundred and fifty feet (150') from the point where the center lines of such ways intersect.
- 5) **Maintenance:** Every sign shall be maintained by the owner in a safe and well maintained condition. Every standing sign shall be kept free and clear of all obnoxious substances, rubbish and waste.
- 6) **Traffic Hazard:** No sign shall be erected that shall in any way create a traffic hazard, nor shall it in any way obscure or confuse traffic control.
- 7) **Sign Projection:** No sign or sign structure may project beyond the owner's property line. No sign shall be erected either in the public right of way.
- 8) **Attachment:** Any sign must be securely attached to either a building, or in the case of a standing sign, a foundation.
- 9) **Billboards:** Billboards and similar non-accessory signs are specifically prohibited in the Town of West Boylston unless allowed under the provisions of the Outdoor Advertising Board of the Commonwealth of Massachusetts.
- 10) **Lighting:**
- a) Illuminated signs are not permitted in residential districts.
  - b) Internally illuminated signs, luminous signs, and signs illuminated from an external source directed solely toward a sign are the only permitted methods of illumination.
  - c) The light for any sign shall be so maintained at a sufficiently low level of intensity and brightness that it shall not adversely affect the neighboring premises so the safe vision of operators of vehicles moving on public ways.
  - d) Signs shall not be illuminated directly or indirectly between the hours of 12:00 a.m. and 6:00 a.m. unless the premises are open during those hours.
- 11) **Maximum Height:** The maximum height of any sign shall not exceed the height of the roof or the ridge line of any associate structure. In no case shall the height of the sign exceed twenty feet (20') from the ground.
- 12) **Gasoline Pump:** The standard type of gasoline pump bearing thereon in the usual size and form the name or type of gasoline and the price thereof shall not be deemed to be a sign under this by-law.

## **E. Permitted Signs**

### **1) Signs not specifically permitted by this by-law shall not be allowed.**

### **2) Signs permitted in all districts:**

- a) For Sale:** One (1) unlighted temporary sign offering premises for sale or lease for each parcel in one ownership provided it shall not exceed four (4) square feet in surface area and it shall be set back at least ten feet (10') from the street lot line.
- b) Artisan:** One (1) unlighted temporary sign of a painter or other artisan erected during the period of when such person is performing work on the premises on which the sign is erected, provided that it shall not exceed four (4) square feet in surface area and it shall be set back at least ten feet (10') from the street lot line.
- c) Political Signs:** Political signs shall be permitted in all districts if they are stationary, unlighted and do not exceed four (4) square feet. Political signs shall be displayed no earlier than thirty (30) days prior to a voting day, and shall be removed within five (5) days after voting day.
- d) Yard Sale:** Signs advertising owner's personal property for sale, i.e. yard sales, etc., shall be allowed for not more than five (5) days. Signs shall not exceed four (4) square feet in area.

### **3) Signs Permitted in Residential Districts**

- a)** One (1) sign for each dwelling unit not exceeding two (2) square feet identifying the occupant or the designation of any authorized occupation permitted.
- b)** In general residence districts, one (1) standing sign for each parcel developed for multi-family use, provided that such sign shall not exceed twenty (20) square feet in surface area and it shall not exceed twenty (20) square feet in surface area and it shall be set back at least ten feet (10') from any street lot line and no part of it shall be more than fifteen feet (15') from the ground.
- c)** One (1) direction or information sign for each multi-family dwelling building, provided such sign shall not exceed two (2) square feet in surface area.
- d)** Home occupation (Section 3.5, B.2)

One (1) sign not to exceed two square feet in area which shall be attached to a building is permitted but only to display the occupant's name and occupation.

### **4) Signs Permitted in Business Districts and Industrial Districts:**

- a)** One (1) unlighted temporary sign offering the premises for sale or lease provided it shall not exceed sixteen (16) square feet in area and it shall be set back at least ten feet (10') from the street lot.
- b) Window signs:** Unlighted temporary signs attached to the inside of a window or glass door are permitted but may not cover more than twenty-five percent (25%) of the window area. Window signs promoting public, civic, non-profit and non- political activities shall not be counted against the allowable twenty-five percent.



- c) Three temporary / moveable sign permits per business may be issued by the building inspector per year, provided that at least 120 days have passed since the expiration date of the previous temporary/moveable sign permit.
- i.) No permits for temporary /moveable signs shall be issued until the building inspector has determined that all other signs on the property, including window signs, conform to all the provisions of this by-law.
  - ii.) Temporary/moveable signs shall not be larger than twenty (20) square feet.
  - iii.) Where there is more than one business on a lot, only one temporary/moveable may be displayed at a time, except that within a business center, more than one sign may be displayed at a time provided that those signs are located not more than five feet (5') from the building.
  - iv.) No temporary/moveable sign may be located closer than ten feet (10') from the front property line.
  - v.) Temporary/moveable signs shall be illuminated and shall conform to standards set forth in Section F.2 A of this by-law.
  - vi.) Existing temporary/moveable signs shall be subject to the conditions of this section as soon as their present permit expires, except that one new permit may be issued after thirty (30) days, and hereafter the provisions of Section c, above, shall apply, 120 days.
- d) **Single business in single building:** There shall not be more than one (1) wall sign not to exceed thirty (30) square feet or projecting sign not to exceed twenty-four (24) square feet affixed to each side of the building which faces a public way.
- e) **Two (2) or more businesses in a single building:** There shall not be more than one (1) wall sign, not to exceed thirty (30) square feet for each business or projecting sign not to exceed twenty-four (24) square feet for each business affixed to each side of the building which faces a public way. Total square feet shall not exceed ten percent (10%) of wall area to which it is affixed.
- f) **Standing sign:** One standing sign per business lot shall be permitted if the Inspector of Buildings finds that there is need for such a sign due to the nature and use of the premises or the location of the business with reference to the public way or ways and that such a sign will be in harmony with the general purpose and intent of this by-law.
- Standing signs shall not exceed forty (40) square feet and not exceed the height of the highest building on the premises. In no case to exceed twenty feet (20') in height from the ground. The sign structure shall be firmly anchored to an approved foundation. The sign and structure shall be kept in good repair and painted. Such signs shall be set back from the public way in such a manner that the forward most projection of the sign be not less than ten feet (10') from the lot line.
- g) **Business Center Sign:** A standing sign in a business center shall be allowed subject to the other restrictions of this section and the following:
- i.) One (1) standing sign, on a single structure, not to exceed forty (40) square feet identifying the business center, shopping center, or industrial park and/or



the business therein.

or

- ii.) One (1) standing sign, on a single structure, with the portion identifying the business center, shopping center or industrial park, not to exceed twenty (20) square feet and the portion identifying the individual business or industrial units not to exceed four (4) square feet per unit.

In no case shall a business center sign exceed a total area of eighty (80) square feet.

## **F. Administration and Enforcement**

### **1) Enforcement**

- a) The Inspector of Buildings is hereby authorized to enforce this by-law. The Inspector of Buildings is authorized to order the repair or removal of any sign and its supporting structure which, in his judgment, is dangerous or in disrepair or which is erected or maintained contrary to this by-law.
- b) The Inspector of Building shall, at reasonable times and upon presentation of proper credentials, have the power to enter upon the premises on which a sign is erected or maintained in order to inspect said sign.
- c) Immediate removal may be ordered by the Inspector of Buildings of any sign requiring a permit which has been erected without first obtaining such permit.
- d) **\*40** Any other sign which has been ordered removed by the Inspector of Buildings, or is abandoned or discontinued, shall be removed by the sign owner or the owner of the property on which the sign is located within thirty (30) days of written notice.

*\*40- Amended May 21, 1990 – Article 24*

- e) Violation of any provision of this by-law or any lawful order of the Inspector of Buildings shall be subject to a fine of not more than \$100.00 per offense.

Each day that violation continues shall constitute a separate offense.

### **2) Permits**

- a) A Sign Building Permit from the Inspector of Buildings shall be required for the erection, construction or alteration of a sign. A completed Sign Building Permit Application shall be accompanied by the written consent of the owner or lessee of the premises upon which the sign is to be erected and a Sign License Fee as established by the Board of Selectmen.

In reviewing applications submitted to him, the Inspector of Buildings shall apply the following standards, in acting upon each Sign Building Permit, unless otherwise specifically provided:

- i. The sign will not cause visual confusion, glare or offensive lighting in a neighborhood.
- ii. The sign will not be a detriment to the surrounding area.

iii. The sign will not significantly alter the character of the zoning district.

iv. The sign will not interfere with traffic safety in the area. **\*93**

*\*93- Amended May 18, 2008 – Article 47*

b) Any sign of more than twelve feet (12') in height above the average adjoining grade or any roof sign, projecting sign, or standing sign shall have structural drawings including foundations submitted by a registered professional engineer.

c) Within forty-five (45) days after the application permit has been submitted, the Inspector of Buildings shall approve or disapprove the application.

If the Inspector of Buildings does not take any action on the application within forty-five (45) days, the application shall be deemed approved.

d) Sign Licenses shall be issued for five (5) years. Renewal licenses shall be issued after inspection and approval by the Inspector of Building, as well as receipt of the appropriate fee as established by the Board of Selectmen. **\*94**

*\*94- Amended May 19, 2008 – Article 47*

e) Temporary / Moveable sign permits shall be issued for not more than thirty (30) days.

f) No permit shall be required for the following:

i.) Signs in a residential district erected in accordance with the provisions of this by-law.

ii.) Window signs.

iii.) For sale signs.

iv.) Artisans, political, yard sale and No Trespassing signs.

g) A sign permit shall become null and void if the work for which the permit was issued has not been completed within a six (6) month period.

h) Accessory signs legally erected before the adoption of this by-law which do not conform to the provisions of this by-law may continue to be maintained subject to compliance with the requirements for a permit in effect as of the adoption of this by-law, provided, however, that no such sign shall be permitted, if after the adoption of this by-law, it is enlarged, reworded, redesigned, or altered in any substantial way, except to conform to the requirements of this by-law.

Any sign legally erected before the adoption of this by-law which after that date either:

i.) Advertises, calls attention to, or identifies products, persons or activities which are no longer sold, located or carried on at the premises be removed within sixty (60) days after notice by the Inspector of Buildings.

ii.) Has not been repaired or properly maintained must, within sixty (60) days after

notice to that effect was given by the Inspector of Buildings, be brought into compliance with the requirements of this by-law or removed.

**3) Fees \*39**

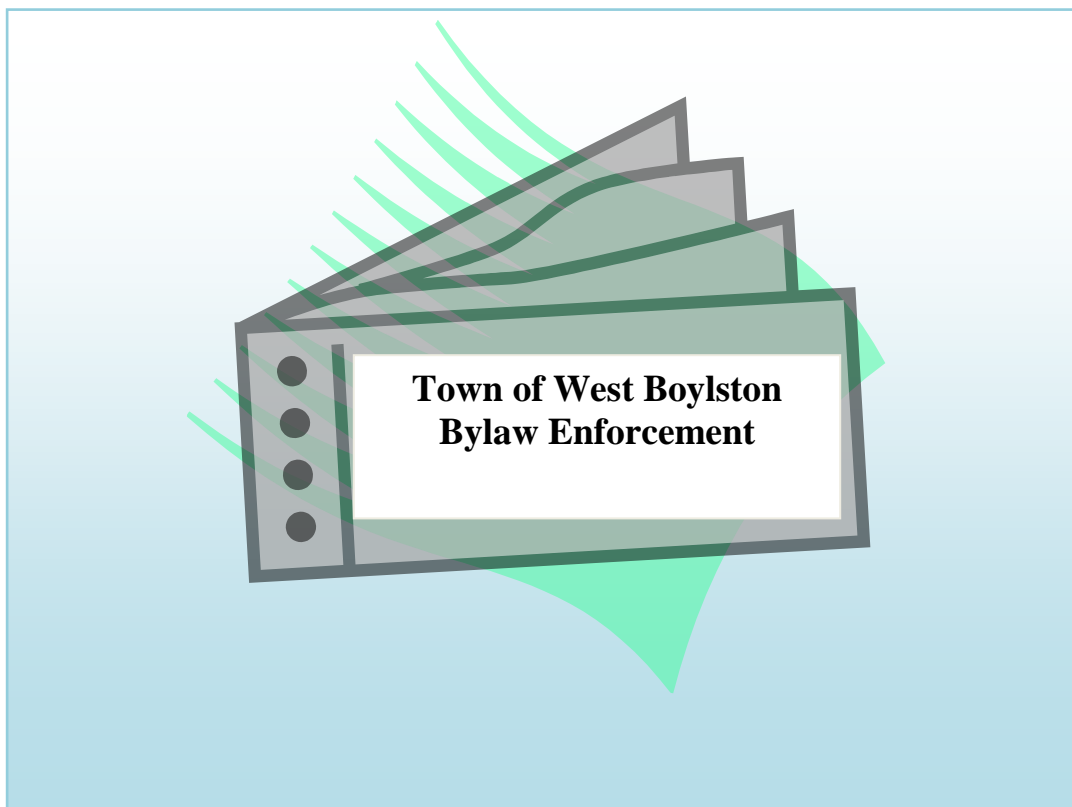
- a) All fees shall be paid to the Town of West Boylston and collected by the Inspector of Buildings.
- b) After the adoption of this by-law, the sign permit fees shall be set by the Board of Selectmen.

*\*4- Amended Feb. 23, 1981 – Article 1;  
\*38-39- May 21, 1990 – Articles 22-23; and  
\*43- Feb 24, 1992 – Article 7*

# *Section 6-*

## *Administration*

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**6.1****Enforcement \*1, \*20**

The Inspector of Buildings shall be charged with the enforcement of the zoning ordinance or by-laws against any person allegedly in violation of the same and if such Building Inspector declines to act, he shall notify in writing the party requesting such enforcement of any action or refusal to act, and the reasons therefore, within fourteen (14) days of receipt of such request.

Actions, suits, or proceedings to enforce this by-law shall be in accordance with Sections, 7, 8, and 17 of Chapter 40A and/or Section 2 1D of Chapter 40 of the General laws.

*\*1- Amended May 4, 1977 – Article 23; and*

*\*20- May 22, 1989 – Article 32*

**6.2****Appeals, Special Permits and Variances \*27****A. Board of Appeals \*5 \*21 \*90**

There shall be a Board of Appeals consisting of five members appointed by the Selectmen, one for a term of one year, one for a term of two years, one for a term of three years, one for a term of four years, and one for a term of five years. Said board shall elect annually a chair and a clerk from its own number. There shall be three associate members of the Board of Appeals appointed by the Board of Selectmen. Each shall serve a term of five years.

In the case of a vacancy, inability to act, or conflict of interest on the part of a member of the Board of Appeals, his place may be taken by an associate member designated by the chair.

*\*5- Amended June 15, 1981 - Article 25;*

*\*21- May 22, 1989 – Article 33; and*

*\*90- May 20, 2008 – Article 43*

**B. Planning Board**

The Planning Board is and shall be the Planning Board elected from time to time pursuant to the Town Bylaws and under the authority of Chapter 40 A, Massachusetts General Laws.

**C. Board of Selectmen**

The Board of Selectmen is and shall be the Board of Selectmen elected from time to time pursuant to the Town By-laws and under the authority of Chapter 40A, Massachusetts General Laws.

**D. Appeals**

The Board of Appeals shall hear and decide upon appeals by any person aggrieved by reason of his inability to obtain a permit from any administrative officer and by any person aggrieved by the enforcement action from any administrative officer under the provisions of Chapter 40A of the Massachusetts General Laws.

**E. Special Permits**

- 1) The Board of Appeals shall hear and decide only such special permits as are specifically authorized by the terms of this by-law. The Board may grant special permits after a public hearing only where such conditions and safeguards as required by this by-law have been made, and only after a determination that such grant would not be detrimental to the public health, safety, welfare, comfort or convenience of the community, would not be adverse to the Town's economy and environment and is in harmony with the intent and purpose of this by-law.
- 2) The Planning Board shall hear and decide only such permits as are specifically authorized by the terms of this by-law. The Board may grant special permits after a public hearing only where such conditions and safeguards as required by this by-law have been made, and only after a determination that such grant would not be detrimental to the public health, safety, welfare, comfort or convenience of the community, would not be adverse to the town's economy and environment and is in harmony with the intent and purpose of this by-law.
- 3) The Board of Selectmen shall hear and decide only such special permits as are specifically authorized by the terms of this by-law. The Board may grant special permits after a public hearing only where such conditions and safeguards as required by this by-law have been made, and only after a determination that such grant would not be detrimental to the public health, welfare, safety, comfort or convenience of the community, would not be adverse to the town's economy and environment and is in harmony with the intent and purpose of this by-law.
- 4) A special permit shall not be granted by a Special Permit Granting Authority (Board of Appeals, Planning Board or Board of Selectmen) unless and until:
  - a) A written application for a special permit is submitted indicating the specific section of this by-law under which the special permit is sought and stating the grounds on which it is requested.
  - b) The SPGA (Special Permit Granting Authority) has made written findings certifying compliance with the specific provisions of this by-law governing the exception and satisfactory provision and arrangement has been made covering the following where applicable:
    - i.) Ingress and egress to property and proposed structures thereon with particular reference to automotive and pedestrian safety and convenience; off-street parking and loading areas where required; traffic flow and control; access in case of fire or catastrophe; and the capability of public roads to support the added traffic safely.
    - ii.) The proposed use will not create any danger of pollution to public or private water facilities and the methods of drainage of groundwater from the site shall not have an adverse effect on the surrounding environment, any waterways or wetlands.
    - iii.) Approval of sewage disposal system has been obtained from the Board of Health.
    - iv.) No excessive noise, vibration, glare, dust, smoke, heat, or odor shall be observable at the lot lines.
    - v.) Satisfactory arrangement of the refuse disposal and service areas with adequate

screening from adjoining lots and public ways.

- vi.) Lot shall contain required setbacks, yards and other open spaces.
  - vii.) The use shall be in general compatibility and harmony with adjacent properties and other properties in the district.
  - viii.) All other provisions of this by-law shall be complied with where applicable.
  - iv.) No excessive noise, vibration, glare, dust, smoke, heat, or odor shall be observable at the lot lines.
  - v.) Satisfactory arrangement of the refuse disposal and service areas with adequate screening from adjoining lots and public ways.
  - vi.) Lot shall contain required setbacks, yards and other open spaces.
  - vii.) The use shall be in general compatibility and harmony with adjacent properties and other properties in the district.
  - viii.) All other provisions of this by-law shall be complied with where applicable.
- c) A special permit shall only be issued following a public hearing within 65 days of the filing of the application with the SPGA and the Town Clerk who certifies the filing date.

Within ten (10) days after receipt of the application for a special permit under this section, the SPGA shall transmit copies thereof, together with copies of the accompanying plans to the Planning Board (in case of the Board of Appeals), Board of Health and the Conservation Commission.

All such boards shall investigate the application and report, in writing, their recommendation to the SPGA within thirty-five (35) days.

Failure to submit their recommendations shall be deemed as approval of the application.

The SPGA shall not take final action on such application until receiving the above mentioned reports or thirty-five (35) days have passed since the transmittal of the application to the boards.

Failure of the SPGA to take final action upon the application for a special permit within ninety (90) days of the date of the public hearing shall be deemed a grant or the permit applied for and the Town Clerk shall certify forthwith.

The time allowed for action by the SPGA may be extended by mutual consent of the applicant and the SPGA.

## **F. Variances**

The Board of Appeals may grant, upon appeal or petition with respect to particular land or structure, a variance expressly including a variance for the use, from the provisions of this by-law where said Board specifically finds that owing to the circumstances relating to the soil conditions, shape, or topography of such land or structures and especially affecting such land or structure, but not affecting the general zoning district in which it is located, a literal enforcement of the provisions of this by-law would involve substantial hardship, financial or otherwise, to the petitioner or appellant and that desirable relief may be granted without



substantial detriment to the public good and without nullifying or substantially derogating from the intent or purpose of the zoning by-law.

#### **G. Time Limits \*11**

A special permit or variance granted pursuant to this section shall lapse after one (1) year, not including such time required to pursue or await the determination of an appeal from a grant thereof, if substantial use thereof has not sooner commenced, or in the case of a permit for construction, if construction has not begun by such date.

*\*11- Amended Oct 28, 1985 – Article 13; and*

*\*27- May 21, 1990 – Article 10*

### **6.3**

#### **Penalties \*19**

- A. Any violation of the provisions of this by-law, the conditions of a permit granted under this bylaw, or any decisions rendered by the Zoning Board of Appeals or Planning Board under this by-law, shall be liable to a fine of not more than one hundred dollars (\$100.00) for each violation. Each day such violations continue shall be deemed a separate offense.
- B. In addition to the procedure for enforcement as described above, the provisions of by-law, the conditions of a permit granted under this by-law, or any decision rendered by the Zoning Board of Appeals or Planning Board under this by-law, may be enforced by the Building Inspector by non-criminal complaint pursuant to the provisions of the General Laws, Chapter 40, Section 21 D.

The fine for any violation disposed of through this procedure shall not be more than one hundred dollars (\$100.00) for each offense. Each day such violations continue shall be deemed a separate offense.

*\*19- Amended May 22, 1989 – Article 31*

### **6.4**

#### **Other Regulations**

This by-law shall not interfere with or annul any by-law rule, regulation, or permit, provided that, unless specifically excepted, where this by-law is more stringent it shall control.

### **6.5**

#### **Validity**

The validity of any section or provision of this by-law shall not invalidate any other section or provisions thereof.

### **6.6**

#### **Amendment**

This by-law may be changed by amendment, addition, or repeal, as provided in General Laws, Section 5 of Chapter 40 A

A separate, conspicuous statement shall be included with property tax bills sent to nonresident property owners stating that notice of hearings to amend this zoning by-law shall be sent by mail, postage pre-paid, to any such owner who files an annual request for such notice with the Town Clerk no later than January 1st and pays a fee of \$5.00 at the time of

submission of such request.

**6.7**

**Effective Date <sup>\*1</sup>**

The effective date for any amendment to this by-law would be the earliest date permitted under Section 32 of Chapter 40 and Section 5 of Chapter 40A of the General Laws.

*<sup>\*1</sup>- Amended April 4, 1977 – Article 23*